



# भारत का राजपत्र The Gazette of India

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सं. 50] नई दिल्ली, दिसम्बर 8—दिसम्बर 14, 2013, शनिवार/अग्रहायण 17—अग्रहायण 23, 1935

No. 50] NEW DELHI, DECEMBER 8—DECEMBER 14, 2013, SATURDAY/AGRAHAYANA 17—AGRAHAYANA 23, 1935

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं  
Statutory Orders and Notifications Issued by the Ministries of the Government of India  
(Other than the Ministry of Defence)

विदेश मंत्रालय

(सीपीवी प्रभाग)

नई दिल्ली, 3 दिसम्बर, 2013

का०आ० 2593.—राजनयिक और कांसुलीय ऑफिसर (शपथ और फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में केंद्र सरकार एतद्वारा श्री अनुराग कुमार, सहायक को 3 दिसंबर, 2013 से भारत के राजदूतावास, मिन्स्क, सहायक कांसुलर अधिकारी के कर्तव्यों का पालन करने के लिए प्राधिकृत करती है।

[सं.टी. 4330/01/2006]

आर०के० पेरिनडिया, उप सचिव (कांसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 3rd December, 2013

S.O. 2593.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorize Shri Anurag Kumar, Assistant, in

Embassy of India, Minsk to perform the duties of Assistant Consular Officer with effect from 3rd December, 2013.

[No. T.4330/01/2006]

R. K. PERINDIA, Dy. Secy. (Consular)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 18 नवम्बर, 2013

का०आ० 2594.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस सी सी एल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 58/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/11/2013 को प्राप्त हुआ था।

[सं० एल-22012/33/2013-आईआर (सी एम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 18th November, 2013

S.O. 2594.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref. No. 58/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 18/11/2013.

[No. L-22012/33/2013-IR(CM-II)]  
B. M. PATNAIK, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

**Present :** Smt. M. VIJAYA LAKSHMI,  
Presiding Officer

Dated the 3rd day of October, 2013

#### INDUSTRIAL DISPUTE No. 58/2013

#### Between:

The General Secretary (Riaz Ahmed),  
Singareni Miners & Engg. Workers Union (HMS)  
Qtr. No. C-34, Sector-I, Godavarikhani,  
Karimnagar (AP)-505209 .....Petitioner/Union

AND

The Chief General Manager,  
M/s. Singareni Collieries Company Ltd.,  
Srirampur Area, Srirampur,  
Adilabad Dist.-504303 .....Respondent

#### Appearances:

For the Petitioner: M/s. A. Sarojana &  
K. Vasudeva Reddy, Advocates

For the Respondent: None

#### AWARD

The Government of India, Ministry of Labour by its Order No. L-22012/33/2013-IR(CM-II) dated 1.5.2013 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman represented by the General Secretary, Singareni Miners & Engg. Workers Union (HMS). The reference is,

#### SCHEDULE

"Whether the action of the Chief General Manager, M/s. Singareni Collieries Company Ltd., Srirampur Area, Srirampur, Adilabad Dist., in terminating the services of Sri Thallapalli Sadannandam, Ex. Genl. Mazdoor, RK-6 inc., Srirampur Area with effect from 10.12.2002 is justified or not? If not, to what relief the applicant is entitled for?"

The reference is numbered in this Tribunal as I.D. No. 58/2013 and notices were issued to the parties concerned.

2. The case stands for filing of Counter by the Respondent to 14.10.2013. Petitioner filed IA No. 175/2013 on 3.10.2013 seeking for advancement of the case to 3.10.2013 and filed a memo seeking for permission to withdraw the case.

3. In pursuance of the order in IA No. 175/2013 dated 3.10.2013, this case is advanced to 3.10.13. In the memo filed by the Petitioner seeking for permission to withdraw the case, Petitioner pleaded that the management was kind enough to offer employment to him subject to withdrawal of the present dispute and that he be permitted to withdraw the petition.

4. Notice given to Respondent. Heard both parties. Petitioner is permitted to withdraw his case.

5. In the result, the case is dismissed as withdrawn. Award is passed accordingly. Transmit.

Dictated to Sri J. Vijaya Sarathi, UDC transcribed by him and corrected by me on this the 3rd day of October, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

#### Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 18 नवम्बर, 2013

कांआ 2595.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 79/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/11/2013 को प्राप्त हुआ था।

[सं० एल-22012/149/2011-आईआर (सी एम-II)]

बी०एम० पटनायक, डेस्क अधिकारी

New Delhi, the 18th November, 2013

**S.O. 2595.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 79/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court,

Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 18/11/2013.

[No. L-22012/149/2011-IR(CM-II)]  
B. M. PATNAIK, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

**Present :** Smt. M. VIJAYA LAKSHMI,  
Presiding Officer

Dated the 5th day of September, 2013

#### INDUSTRIAL DISPUTE No. I.D. 79/2011

#### Between :

The General Secretary

(Sri Bandari Lingaiah)

SC Employees Union (CITU)

Q. No. 39-T, SMG X Road, Somagudem,

Bellampalli (Via),

Adilabad

....Petitioner

AND

The General Manager,

M/s. Singareni Collieries Company Limited,

Mandamarri Division,

Mandamarri-504303

....Respondent

#### Appearances :

For the Petitioner: NIL

For the Respondent: NIL

#### AWARD

The Government of India, Ministry of Labour by its Order No. L-22012/149/2011-IR(CM-II) dated 17.10.2011 referred the following dispute between the management of M/s. Singareni Collieries Company Ltd., and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

#### SCHEDULE

"Whether the action of the General Manager of M/s. Singareni Collieries Company Ltd., Mandamarri Division, Adilabad District in denying promotion to Shri Nathari Shankaraiah and seven others (List enclosed) as SF-D is legal and justified? To what relief the workman concerned are entitled to?"

The reference is numbered in this Tribunal as I.D. No. 79/2011 and notices were issued to the parties.

2. The case stands posted for appearance of Petitioner union and for filing of claim statement and documents. Petitioner union called absent and there is no representation since long time. In spite of giving fair opportunity again and again Petitioner union is not taking interest in the proceedings. In the circumstances, taking that Petitioner union is not interested in the Proceedings, petition is dismissed.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 5th day of September, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

#### Appendix of evidence

Witnesses examined for  
the Petitioner

NIL

Witnesses examined for  
the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 18 नवम्बर, 2013

**का०आ० 2596.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 85/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/11/2013 को प्राप्त हुआ था।

[संएल-22012/155/2012-आईआर (सी एम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 18th November, 2013

**S.O. 2596.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 85/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 18/11/2013.

[No. L-22012/155/2012-IR(CM-II)]

B.M. PATNAIK, Desk Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT  
HYDERABAD****Present :** Smt. M. VIJAYALAKSHMI,  
Presiding Officer

Dated the 5th day of August, 2013

**INDUSTRIAL DISPUTE No. I.D. 85/2012****Between :**The General Secretary  
(Sri Peddapalli Satyanarayana)  
Singareni Collieries Labour Union (TNTUC),  
Qr. No. MD-7/J, Millenium Colony, Ganganagar,  
Godavarikhani-505209 .....Petitioner**AND**The General Manager,  
M/s. Singareni Collieries Company Ltd.,  
Ramagundam-I Area, Godavarikhani,  
Karimnagar Dist.-505209 .....Respondent**Appearances :**

For the Petitioner: NIL

For the Respondent: M/s. P.A. V.V.S. Sarma &  
Vijaya Lakshmi, Advocates**AWARD**

The Government of India, Ministry of Labour by its Order No. L-22012/155/2012-IR(CM-II) dated 7.11.2012 referred the following dispute between the management of M/s. Singareni Collieries Company Ltd., and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

**SCHEDULE**

"Whether the action of the management of General Manager of M/s. Singareni Collieries Company Ltd., Ramagundam-I Area, Godavarikhani in awarding punishment of reduction of 2 SPRAs with effect from 1.7.2006 in respect of Annadi Hanumaiah, Hauler Operator, GDK-I Inc., is justified or not? To what relief the employee in question is entitled for?"

The reference is numbered in this Tribunal as I.D. No. 85/2012 and notices were issued to the parties.

2. The case stands posted for appearance of Petitioner union and for filing of claim statement and documents. Petitioner union called absent and there is no representation. In spite of giving fair opportunity again and again Petitioner union is not taking interest in the proceedings. In the circumstances, taking that Petitioner union is not interested in the proceedings, petition is dismissed.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 5th day of August, 2013.

M. VIJAYALAKSHMI, Presiding Officer

**Appendix of evidence**Witnesses examined for  
the Petitioner

NIL

Witnesses examined for  
the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 18 नवम्बर, 2013

कांआ 2597.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एन एल सी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 100/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/11/2013 को प्राप्त हुआ था।

[सं एल-22012/154/2011-आईआर (सीएम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 18th November, 2013

**S.O. 2597.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 100/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of M/s. Neyveli Lignite Corporation Ltd., and their workmen, received by the Central Government on 18/11/2013.

[No. L-22012/154/2011-IR(CM-II)]

B.M. PATNAIK, Desk Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
CHENNAI**

Thursday, the 31st October, 2013

**Present :** K.P. PRASANNA KUMARI,  
Presiding Officer**Industrial Dispute No. 100/2011**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section

10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Neyveli Lignite Corporation Ltd. and their workmen)

**Between :**

Sri R. Paranjothy : 1st Party/Petitioner

AND

The Director (Personnel) : 2nd Party/Respondent  
M/s. Neyveli Lignite Corporation Ltd.  
Neyveli-607803

**Appearances :**

For the 1st Party/Petitioner : Sri M. Pari, Advocate

For the 2nd Party/Management : M/s N.A.K. Sarma,  
Advocates

**AWARD**

The Central Government, Ministry of Labour & Employment vide its Order No. L-22012/154/2011-IR (CM-II) dated 02.12.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of Neyveli Lignite Corporation in removing the workman Sri R. Paranjothy, Technician IA, Mine-I from service is legal and justified? To what relief the workman concerned is entitled to?"

2. After the receipt of the Industrial Dispute this Tribunal has numbered it as ID No. 100/2011 and issued notices of both sides. Both sides appeared through counsel and filed Claim and Counter Statement respectively.

3. The Case that is put forth in the Claim Statement is this:

The petitioner had joined the Respondent Corporation as a Worker, in the year 1994. A vehicle loan was sanctioned to the petitioner by order dated 18.04.2008 and recovery was effected from April, 2008. The petitioner was not able to produce the relevant documents before the Management. The petitioner was suspended from service without any notice by order dated 23.06.2008. A Charge Memo also has been issued to him alongwith this. Though the petitioner has requested for subsistence allowance the Respondent has not considered this request. The Respondent has conducted a domestic enquiry setting the petitioner ex-parte and has given a finding against the petitioner. On the basis of the finding a Show Cause Notice was issued to the petitioner and the petitioner has submitted his explanation. On the basis of the explanation the Respondent has issued a letter extending time till 15.12.2008. The petitioner has requested for further time by another letter. The petitioner was not afforded an opportunity to reopen the enquiry. He was dismissed from service by order dated 16.01.2009. The enquiry was conducted against the

petitioner without complying with the principles of natural justice. The punishment imposed on the petitioner is excessive also. The petitioner is entitled to reinstatement into service with continuity of service alongwith backwages and all other attendant benefits. An order may be passed accordingly.

4. The Respondent has filed Counter Statement contending as follows:

The petitioner has joined the Respondent Corporation as an Artisan Trainee in March 1984. He had reached the post of Technician Grade-IA. While in this post he had applied for conveyance advance and the Respondent has sanctioned advance of Rs. 40,000/- for purchasing a two-wheeler. The amount was disbursed to the petitioner on 18.04.2008. Though the petitioner received the conveyance advance he neither purchased a two wheeler nor submitted the relevant documents to the Respondent. In spite of reminders having been sent, he failed to fulfill the terms and conditions of the loan. So he was required to refund the sanctioned advance with penal interest, apart from liable to be disciplinarly proceeded for misconduct. Suspension order-cum-charge memo was issued to the petitioner on 23.06.2008 calling upon him to show cause within 3 days of the receipt of the memo. In this it was indicated that he is eligible for subsistence allowance during the period of suspension. Enquiry Notices were sent to the petitioner to his local address. He did not appear for enquiry. So he was made ex-parte in the enquiry proceedings. Adequate opportunity has been given to the petitioner to defend himself. He has failed to utilize the opportunity. Enquiry was conducted in compliance with the principles of natural justice. The Enquiry Officer has found that the charges against the petitioner are proved. The report of enquiry was sent to him and he has submitted his objection. He has admitted the findings of the Enquiry Officer by his objection dated 06.11.2008. On considering the objections the Disciplinary Authority has passed final order imposing punishment of removal from service. The petitioner is not entitled to any relief. The petition is to be dismissed.

5. The evidence in the case consists of oral evidence of the petitioner examined as WW1, the witness of the Respondent examined as MW1 and documents marked as Exs. W1 to Ex. W29 and Exs. M1 to Ex. M11.

6. The points for consideration are:

(i) Whether the removal of the petitioner from the service of the Respondent is legal and justified?

(ii) What is the relief to which the petitioner is entitled?

The Points

7. The petitioner had admittedly joined the Respondent Corporation as a Worker in 1984. He was



Artisan (Trainee) at that time. On 18.11.2008 on which date the petitioner was removed from service he was working as Technician Grade-IA in the service of the Respondent. The removal of the petitioner from the service of the Respondent is in connection with the failure of the petitioner to comply with the terms and conditions of his availing a Vehicle Loan. Even as stated by the petitioner in his Claim Statement, vehicle loan was sanctioned to him by order dated 18.04.2008. Further details of the loan are available from the Counter Statement of the Respondent. He had applied for vehicle loan of Rs. 40,000/- for purchasing a new two wheeler (Bajaj-Discover 135 (Disc) Model) (Ext. M11) is the copy of the application for conveyance advance given by the petitioner. This specifies that the advance of Rs. 40,000/- is required for purchasing the two-wheeler. It is clear from the Claim Statement of the petitioner itself that the loan amount has been disbursed to him. What he had stated in the Claim Statement is that due to personal and family problems he was unable to produce the necessary documents before the Respondent. He has stated in the Claim Statement that for this reason suspension-cum-charge memo has been issued to him without any prior notice.

8. Ex.M1 is the copy of acknowledgement issued by the petitioner for receiving the cheque of Rs. 40,000/- for purchase of motor cycle. This shows that he has received the amount on 18.04.2008. The stand of the Respondent is that within 30 days of receipt of the advance amount the petitioner was bound to produce the mortgage bond, stamped cash receipt from the vendor for the amount paid for the vehicle, registration book in evidence of the actual transfer of the vehicle in the name of the employee and also comprehensive insurance policy for value of not less than the amount of advance. Ex.M4, Ex.M5 and Ex.M6 are copies of memos sent to the petitioner for non-production of relevant documents. It is clear from the very statement of the petitioner in the Claim Statement itself that he did not submit the relevant documents to the Respondent to show that he has purchased the two-wheeler. Even at the stage of trial of the case before this Tribunal there is no case for the petitioner that he has purchased the vehicle using the advance amount. What he has stated is that it was used by his wife to meet some dire necessities.

9. The petitioner has raised a contention in the Claim Statement that the enquiry conducted against him is not accordance with the principles of natural justice. He has stated that proper notice has not been issued to him in the proper address and this is why he happened to be set ex-parte in the enquiry proceedings. On the other hand it is contended by the Respondent that in spite of notices having been sent to the petitioner repeatedly he has failed to turn up and that is why he had to be set ex-parte. The counsel for the petitioner has referred to Page-13 of the typed set of documents of the Respondent and pointed out that the petitioner has received the notice furnishing

the date of enquiry as 30.07.2008 on the said date only and so there was no question of his participating in the enquiry proceedings on the said day. In the absence of the petitioner enquiry was adjourned to 05.08.2008 and then to 09.09.2008. On 09.09.2008 he was set ex-parte and the enquiry was conducted in his absence.

10. The contention that the enquiry is not conducted in accordance with the principles of natural justice is raised by the petitioner on the ground that proper notice has not been given to him. However, even though this question has been raised in the Claim Statement and the Respondent has objected to this in the Counter Statement also, this is not seen raised as a Preliminary Issue. Both parties have gone for trial as if the issue is not in existence. Both sides have adduced evidence. Both the petitioner as well as Respondent have tried to establish the case by oral as well as by documentary evidence. So there is ample material before this Court to decide the issue. So the question whether the enquiry has not been conducted in accordance with the principles of natural justice has become redundant. In Ex.W7 which is a copy of the representation made by the petitioner to the Respondent, on 06.11.2008 he has accepted the findings of enquiry. He has stated that in any case he is not denying the conclusion of the Enquiry Officer. He has added that it was to safeguard him and his family members the conveyance advance has been spent.

11. Ex.M9 is the file of the enquiry proceedings. The report of enquiry reveals the charge against the petitioner as his failure to purchase two-wheeler and to produce the relevant documents in spite of repeated reminders, though the conveyance advance has been obtained. The very admission by the petitioner would show that he has neither purchased the vehicle nor submitted the relevant documents before the Respondent. During his cross-examination before this Court also he has admitted that he has not submitted the vehicle documents to the Respondent. So there is no doubt that the petitioner has committed the misconduct of misusing the conveyance advance.

12. Because of the admission of the petitioner himself and other available evidence there is no reason to differ from the report of the enquiry that the petitioner has committed the offence charged against him in the enquiry. When vehicle advance was received by him he was expected to purchase the vehicle and submit necessary documents to the Respondent. In spite of repeated reminders he has failed to do so. It is not surprising that the Respondent has proceeded against him.

13. The question now to be considered is whether the punishment imposed on the petitioner is not in proportion to the gravity of the offence committed by him. In the Claim Statement the petitioner has claimed that he has got an unblemished record of service. He has produced Ex.W21 to show that he was honoured for meritorious

service. However, according to the Respondent disciplinary proceedings have been initiated against the petitioner earlier on more than one occasion. It is stated in the Counter Statement that in 2005 his annual increment was stopped for a period of one year without cumulative effect for unauthorized absence of 25 days. In the same year he had suffered punishment of reduction of pay by one stage for a period of one year for habitual absence and availing extraordinary leave. In 2006 he was awarded the punishment of demotion to the lower post of Technician-IA for a period of two years for sub-letting his quarters. The petitioner has admitted in his cross-examination that he had suffered all these punishments detailed in the counter statement.

14. In spite of the above punishments imposed on the petitioner earlier, I am constrained to think that the punishment now given to the petitioner is not at all commensurate with the gravity of the offence. It could be seen from the document produced by the petitioner that the other workers who committed similar misconducts were given punishment of a very minor nature. Ex.W29 is the information given to the petitioner by the Respondent under the Right to Information Act. This shows that several other workers also had misused conveyance advance but they were given the punishment of reduction of pay, stoppage of increment or warning as the circumstances required. The punishment of removal from service is so drastic in nature that it is just like imposing punishment of death sentence for an offence failing under Section-323 of IPC. In spite of the history of the petitioner which spells out some aberration in service he need not suffer such a drastic punishment. The punishment imposed is liable to be interfered with.

15. It is a fact that the petitioner has not so far remitted back the amount obtained as conveyance advance, though he has not purchased the vehicle. In Court he has expressed his willingness to remit the amount to the Respondent. In the circumstances an order is passed as follows:

- (a) The Respondent shall, within one week inform the petitioner in writing (with copy to this Tribunal) the exact amount that is payable towards loan with interest and other dues.
- (b) Within a week of receipt of the information, the petitioner shall remit the entire amount with the Respondent.
- (c) Within a week of remittance of the amount, the Respondent shall reinstate the petitioner in service with reduction of pay (from the pay he was drawing at the time of removal from service) by one stage.
- (d) The petitioner will not be entitled to any backwages, but will be entitled to the benefit of continuity of service.

16. An award is passed accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st October, 2013)

K.P. PRASANNA KUMARI, Presiding Officer

#### Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri R. Paranjothy

For the 2nd Party/Management : MW1, Sri R. Subramaniam

#### Documents Marked:

##### On the petitioner's side

Ex.No.	Date	Description
Ex.W1	20.05.2008	Suspension Order
Ex.W2	21.06.2008	Revocation Order
Ex.W3	23.06.2008	Suspension-cum-Charge Sheet Memo
Ex.W4	11.08.2008	Representation by the petitioner
Ex.W5	18.10.2008	Report of the Enquiry Officer
Ex.W6	24.10.2008	Enquiry Report
Ex.W7	06.11.2008	Representation by the petitioner
Ex.W8	18.11.2008	Show Cause Notice
Ex.W9	27.11.2008	Explanation by the petitioner
Ex.W10	05.12.2008	Extension letter
Ex.W11	15.12.2008	Representation by the petitioner
Ex.W12	16.01.2009	Final Order
Ex.W13	02.02.2009	Representation by the petitioner
Ex.W14	13.02.2009	Dismissal Order
Ex.W15	20.02.2009	Representation by the petitioner
Ex.W16	11.03.2009	Final Order
Ex.W17	03.11.2009	Representation by the petitioner
Ex.W18	15.04.2012	Application under R.T.I. Act
Ex.W19	12.06.2012	Reply from the Information Officer, NLC
Ex.W20	—	Particulars in respect of misuse of conveyance advance.
Ex.W21	05.01.2001	D.O. letter no. 3179/B1/2000 regarding award for long and meritorious service.
Ex.W22	18.10.2012	Seeking certain information about the defaulters of conveyance advance and related information under RTI Act, 2005.

Ex.W23	27.09.2010	Information under RTI Act regarding disciplinary action against Sri Bichhanda Patra.
Ex.W24	—	Provision of information to CPIO in respect of Transport Department.
Ex.W25	09.01.2009	CPIO information regarding sanction of Rs. 40,000/- to Sri V. Saravanan, Sr. T.Gr.II.
Ex.W26	—	CPIO information regarding a case of misconduct due to defaulting.
Ex.W27	—	CPIO information regarding list of defaulters for conveyance advance from the year 2000 to 30.06.2012 and action taken.
Ex.W28	24.02.2001	CPIO information regarding memo to Smt. V. Anthoniammal.
Ex.W29	12.09.2007	CPIO information regarding memo issued to Sri. T.V. Subramanian—issue of caution.

**On the Management's side**

Ex.No.	Date	Description
Ex.M1	18.04.2008	Acknowledgement for receiving the cheque for purchases of motor cycle.
Ex.M2	—	Sanction Order.
Ex.M3	22.07.2008	Enquiry Notice.
Ex.M4	22.05.2008	Reminder sent to the 1st Party for non-production of documents.
Ex.M5	20.05.2008	Memo sent to the 1st party for non-production of documents.
Ex.M6	04.06.2008	Memo sent to the 1st party for non-production of documents.
Ex.M7	30.07.2008	Enquiry notice sent to 1st party local address with returned cover and permanent address.
Ex.M8	02.09.2008	Enquiry notice sent to 1st party local and permanent address.
Ex.M9	—	Enquiry proceedings.
Ex.M10	24.10.2008	Proceedings alongwith enquiry report sent to 1st party with returned covers.
Ex.M11	—	Application form for conveyance advance for the purchase of two wheeler/motor car submitted by Paranjothy.

नई दिल्ली, 18 नवम्बर, 2013

**कांआ 2598.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स साउथ ईस्टर्न कोलफील्ड्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 10/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/11/2013 को प्राप्त हुआ था।

[सं एल-22012/402/2003-आई आर (सीएम-II)]  
बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 18th November, 2013

**S.O. 2598.**—In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of M/s. South Eastern Coalfields Ltd. and their workmen, received by the Central Government on 18/11/2013.

[No. L-22012/402/2003-IR(CM-II)]  
B.M. PATNAIK, Desk Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR**

**No. CGIT/LC/R/10/2005**

PRESIDING OFFICER: SHRI R.B. PATLE

The President,  
Rashtriya Koyla Khadan Mazdoor Sangh (INTUC),  
Branch Nowrozabad,  
Distt. Umari (MP)

....Workman/Union

*Versus*

Chief General Manager,  
South Eastern Coalfields Ltd.,  
Johilla Area of SECL,  
PO Nowrozabad,  
Distt., Umari (MP)

....Management

**AWARD**

Passed on this 23rd day of October, 2013

1. As per letter dated 7.1.2005 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/



402/2003-IR (CM-II). The dispute under reference relates to:

"Whether the action of the management of Chief General Manager, Sohagpur Area of SECL in awarding punishment of stoppage of one increment in respect of Shri D.R. Mishra, Sr. Clerk is legal and justified? If not, to what relief the concerned workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Despite of notice issued to the workman, he failed to file his Statement of claim. Workman was proceeded ex parte on 6.12.2005. IInd party filed Written Statement. Case of IInd party is that workman was issued with chargesheet dated 19.7.2001. The allegation against workman were of disorderly behavior on duty, committing violent acts and insisting other employees for committing such acts, threatening superior officers. Mr. R. Guha Roy was appointed as Enquiry Officer and Shri S.N. Jha was appointed as Management Representative. Enquiry was conducted time to time. Details given in Para-9 of the Written Statement. Full opportunity was given to the workman for his defence. On report of Enquiry Officer, misconduct against workman was to be proved. Punishment of stoppage of one increment was imposed.

3. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of Chief General Manager Sohagpur Area of SECL in awarding punishment of stoppage of one increment in respect of Shri D.R. Mishra, Sr. Clerk is legal? In Affirmative

(ii) If not, what relief the workman is entitled to?" Relief prayed by workman is rejected.

### REASONS

4. Workman is challenging punishment order of withholding his one increment. Workman proceeded ex parte on 31.3.2000. Management filed affidavit of evidence of witness Shri Tulsidharan Kurup. His evidence covers most of the contentions in Written Statement that enquiry was conducted against workman and punishment was imposed. His evidence remained unchallenged. I do not find reason to disbelieve his evidence. For above reasons, I record my finding in Point No. 1 in Affirmative.

5. In the result, award is passed as under:—

(1) Action of the management of Chief General Manager, Sohagpur Area of SECL in awarding punishment

of stoppage of one increment in respect of Shri D.R. Mishra, Sr. Clerk is proper.

(2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 18 नवम्बर, 2013

कांआ 2599.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स साउथ ईस्टर्न कोलफील्ड्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 29/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/11/2013 को प्राप्त हुआ था।

[सं एल-22012/208/2001-आई आर (सीएम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 18th November, 2013

S.O. 2599.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 29/2003 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of SECL and their workmen, received by the Central Government on 18/11/2013.

[No. L-22012/208/2001-IR(CM-II)]

B.M. PATNAIK, Desk Officer

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/29/2003

Presiding Officer: SHRI R.B. PATLE

Shri Ram Vilas Shobhnath,  
General Secretary,  
Chhattisgarh Khadan Kharkhana Mazdoor Union,  
Village & PO Bankimongra,  
Distt., Korba, Chhattisgarh

....Workman/Union

Versus

Chief General Manager,  
SECL, Kusmunda Area,  
P.O. Kusmunda Colliery,  
Distt., Korba, Chhattisgarh

....Management

### AWARD

Passed on this 11th day of October, 2013

1. As per letter dated 6.1.2003 by the Government of India, Ministry of Labour, New Delhi, the reference is

received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/208/2001-IR (CM-II). The dispute under reference relates to:

"Whether the action of the management of SECL, Kusmunda Area, Distt., Korba (Chhattisgarh) is not protecting the basic pay of Smt. Lakshmini Bai, General Mazdoor-II on appointment to the post of Security Guard (female) *w.e.f.* 4.1.1997 is legal and justified? If not, to what relief the worker is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman through Union submitted statement of claim at Page 2/2 to 2/4. Case of workman submitted through Union is that Laxmibai was working as General Mazdoor Category-II. As per NCWA-V, she was paid Rs. 79.22 per day (Rs. 2059.72 per month). That as per order dated 4.1.1997, she was appointed as Security Guard Cat-I. She was posted at Kusmunda OC Project. She had objected to less payment of wages on her joining as security guard. That she had joined the post of Security Guard submitting that her pay should not be reduced. However after joining as Security Guard, her pay was fixed to Rs. 1781/- while she was working as General Mazdoor Category I, her pay was Rs. 59.72 despite of her protest at time of joining. It is further contended that in SECL Korba Area, General Mazdoor Category is appointed as security guards. Their pay was not fixed on lower side. The documents are produced by the workman. To be precise, the workman prays for pay protection on her appointment and posting as security guard.

3. IInd party filed Written statement at Page 6/1 to 6/6. IInd party raised preliminary objection that CKKMU Union is not functioning in establishment of IInd party. That workman is not its member therefore said Union has no locus-standi to represent the workman in Reference Proceeding. That workman was provided employment on compassionate ground after death of her husband Kartik Ram. She was as such provided employment on 21.12.1985. On 16.6.1990, workman was transferred to Hasdev Area. The Ist party workman was given benefit of clerk career Group as per guidelines of the company. The applications were invited from all female workers who were interested to work as Security Guard Female Trainee. She was selected as such. The Ist party workman was appointed as security guard female trainee subject to certain conditions. That she would be on training for six months. On completion of training satisfactorily, she would be deployed against sanctioned post. She would be required to undergo training prescribed time to time. Her performance denying training period is not found satisfactory, she would be reverted back to original post. That the post of security guard carried pay scale 1781-43-2383. Said pay scale was allowed to the workman on her joining as security guard trainee on 6.1.1997. Ist party workman having fully

understood terms and conditions accepted the post of security guard. The fixation on her pay is legal.

4. Management denies that workman was initially appointed as General Mazdoor Cat-II. It is reiterated that the workman had accepted terms and conditions for appointment as security guard. It is denied that illegality is committed while fixing her pay. On such ground IInd party prays for rejection of the claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of SECL, Kusmunda Area, Distt., Korba (Chhattisgarh) in not protecting the basic pay of Smt. Lakshmini Bai, General Mazdoor-II on appointment to the post of Security Guard (female) <i>w.e.f.</i> 4.1.1997 is legal.?	In Affirmative
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(ii) If not, what relief the workman is entitled to?"	Relief prayed by workman is entitled.
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#### REASONS

6. Ist party workman is claiming protection of pay as General Mazdoor Cat-II. After her appointment as security guard trainee. Management has denied her claim denying all material contentions. The affidavit of workman is denied covering most of her contentions in Statement of Claim. In para-5 of her affidavit, workman has stated about pay protection of security guards in SECL, Korba Area was allowed by the management.

7. Workman remained absent for her cross-examination. Therefore her evidence cannot be considered. Management filed affidavit of evidence of Shri Albinus Ekka covering the contentions of management in Written Statement. Workman failed to cross-examine witness of management. The documents produced on record are not concerned with the pay protection of workman in SECL. Any rule for pay protection is not produced by workman. The documents produced by workman are not proved, the same being zerox copies. Pay protection given to General Manager Cat-II appointed as Security Guards in Korba Area was as per the settlement between Union and the management. In present case, the management of IInd party is not accepting the claim for pay protection. Therefore the claim of Ist party cannot be accepted. For above reasons, I record my finding in Point No. 1 in Affirmative.

8. In the result, award is passed as under:—

(1) Action of the management of SECL, Kusmunda Area, Distt. Korba (Chhattisgarh) in not protecting the basic

pay of Smt. Lakshmini Bai, General Mazdoor-II on appointment to the post of Security Guard (female) *w.e.f* 4.1.1997 is legal.

(2) Claim of Ist party workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 18 नवम्बर, 2013

**का०आ० 2600.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स साउथ ईस्टर्न कोलफील्ड्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 72/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/11/2013 को प्राप्त हुआ था।

[सं० एल-22012/341/1995-आई आर (सी-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 18th November, 2013

**S.O. 2600.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 72/96) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of SECL, and their workmen, received by the Central Government on 18/11/2013.

[No.L-22012/341/1995-IR(C-II)]

B. M. PATNAIK, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/72/96

Presiding Officer: SHRI R.B. PATLE

General Secretary,  
Chhattisgarh Khadan Karkhana Mazdoor Union,  
Bankimogra, Bilaspur (MP) ....Workman/Union

*Versus*

Chairman-Cum-Managing Director,  
SECL, Seepat Road,  
Bilaspur (MP) ...Management

#### AWARD

Passed on this 17th day of October, 2013

1. As per letter dated 28-2-96 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under

Section-10 of I.D. Act, 1947 as per Notification No. L-22012/341/95-IR (C-II). The dispute under reference relates to:

"Whether the action of the management of SECL, Bilaspur in not providing employment on compassionate ground to Shri Narendra Singh, dependent son of late Shri Suresh Kumar, Ex-Loader, Banki Colliery is legal? If not, to what relief, the dependent of Shri Suresh Kumar is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party Union submitted Statement of Claim at Page 2/1 to 2/5. The case of Ist party union is that Shri Suresh Kumar Loader died on 9-10-84. His widow Chhatkunwar and minor Son Narendra and father Santram were dependents. That as per NCWA applicable from 1-1-83, provided for employment on compassionate ground as per clause 9.4.1 to 9.4.4 that the dependents include unmarried daughter, adopted son. The younger brother, widow daughter, widow daughter-in-law, son-in-law of deceased are considered as dependents. If the dependents are not above age of 35 years are considered for employment, that after death of deceased Suresh Kumar, his widow had requested management for employment on compassionate ground submitting application on 3-2-85. The management failed to provide employment to her. *Vide* letter dated 25-3-85, widow was informed that she was suffering from T.B. therefore she could not be provided employment on compassionate ground. She may receive treatment and after her recovery from illness, she will be considered for employment. Next was when minor son Narendra Singh attain majority, she may apply for employment on compassionate ground. That she had submitted application for her minor son after attaining 18 years of age, the proposal was sent to Head Office of SECL at Bilaspur on 16-11-93. Despite of repeated reminders, no response was received by the Manager. Thereafter the workman approached Union and the reference has been made. Workman further submits that employment on compassionate ground towards Narendra Singh is not provided on the ground of delay. Workman further submits that employment on compassionate ground was provided to Shri Sahettar Singh on 1-8-90. That Shri Subaran died on 2-11-1974. That on death of Shri K. Munnuswamy, his minor son was provided employment on compassionate ground on 30-09-89. On such ground, Union prays that Narendra, S/o deceased Suresh be provided employment on compassionate ground with wages from 5-6-95.

3. IInd party management filed Written Statement at Page 6/1 to 6/2. Claim of Union is denied. The management submits that Late Suresh was appointed on 1-4-84 as piece-rated loader at Banki Colliery. He died natural death on 9-10-84 leaving widow Chhatkunwar. She had not turned up for employment, she was not willing to serve with SECL. At that time, all dues were paid to widow and the property

of late Suresh Kumar was sufficient to maintain his family. That after a gap of 10 years, widow Smt. Chhatkunwar approached to the management for providing employment to her son Narendra Singh who attained age of 18 years. That employer cannot wait for providing employment of dependents of deceased workman or for getting minor dependent major. The vacant posts are required to filled up within reasonable period on requirement basis. That provision for providing employment to dependent was introduced from 1-1-1979 as per NCWA-II, Clause 10.1. The main object to this clause was to provide immediate relief to the family of deceased. In present case, the employment on compassionate ground was claimed after 10 years of death of deceased Suresh. Such claim is not tenable. On above grounds, IInd party prays for rejection of claim of workman.

4. Union filed rejoinder at page 7/1 to 7/2 reiterating its contentions in Statement of Claim. That the employment on compassionate ground were provided to Shri Sahettar Singh, legal heir of Late Shri Subaran and Shri Ilan Goman, legal heir of Late Shri G.S. Prakashan.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of SECL, Bilaspur in not providing employment on compassionate ground to Shri Narendra Singh, dependent son of late Shri Suresh Kumar, Ex-Loader, Banki Colliery is legal and justified? In Negative

(ii) If not, what relief the workman is entitled to? As per final order.

### REASONS

6. Claim of Union that denial of employment on compassionate ground to Narendra Singh, S/o Late Shri Suresh Kumar by management is illegal. That said Narendra be provided employment on compassionate ground. Claim is opposed by the management submitting that Shri Suresh Kumar had left his widow with sufficient property to maintain his family. After his death, she was not interested in employment in SECL. The application for employment on compassionate ground for her son was submitted after 10 years. The management cannot wait for such long period. The evidence is filed by Shri Narendra Singh covering most of the contention in Statement of claim. He was not cross-examined. The evidence of Shri R.S. Singh is recorded. Said witness of Ist party Union states that he had submitted proposal Exhibit W-1 for employment of son of Late Suresh Kumar. The proposal bears his signature. The document

Exhibit W-2 was sent to Smt. Chhatkunwar by him. He had also sent Document Exhibit W-3 to Sub Area Manager and reminder Exhibit W-4 was sent by him. That he had raised dispute before ALC. Management filed reply Exhibit W-5. Document Exhibit W-6 was sent to the Head Office. Document W-7 is order of appointment of Subaran S/o Sehattar Singh. In his cross-examination, he has also proved document Exhibit W-8. In his cross-examination, said witness says Exhibit W-2 bears signature of Mr. Lal. He was acquainted with him. The Company had issued interim orders for employment on vague dependents. That the post cannot be kept vacant for employment of the dependents of deceased for 9 years.

7. The affidavit of management's witness Shri D.B. Janotkar is filed in detail. That the reply Exhibit W-2 dated 5-3-85 was not signed by Area Manager in reply to Application dated 3-2-85, wife of deceased is not written after taking the approval of competent authority. That Sub Area manager was not enjoying powers to communicate to the wife of the deceased. In his cross-examination, management's witness says after 9 years of death of Suresh Kumar, claim was submitted for appointment on compassionate ground. There is no provision to keep post vacant for 9 years for appointment of dependent of deceased employee. The witness further says that copy of NCWA-II is not on the record.

8. After the arguments were heard, learned counsel for IInd party produced copy of NCWA-IV dated 23-12-00 as present matter relates to death of Suresh Kumar in 1984. The claim under reference cannot be governed by NCWA-IV. The copy of NCWA-II is also produced on record. NCWA is made applicable from 11-10-83. NCWA-III-9.4.1 provides

"The employment would be provided to the dependent of workers disabled permanently and those who meet with death while in service. This provision will be implemented as follows:—

**9.4.2.—(i)** the dependent for this purpose means the wife/husband is the case may be, unmarried daughter, son and legally adopted son. If no such direct dependent is available for employment, younger brother, widowed daughter/widowed daughter in law residing with the deceased and almost wholly dependant on the earnings of the deceased may be considered to be the dependent of the deceased.

**(ii)** The dependant to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit shall not apply in the case of the spouse."

NCWA-III does not provide specific time for providing employment on compassionate ground. NCWA-IV Para 9.5.0 (iii) provided in case of death either in mine accident or for other reasons for medical unfitness under



Clause 9.4.0, if no employment has been offered and the male dependant of the concerned worker is 12 years and above in age, he will be kept on a live roster and would be provided employment commensurate with his skill and qualifications when he attains the age of 18 years.

NCWA is dated 23-12-2000. It was not in force at the time of death of Shri Suresh Kumar in 1984, matter is only covered in NCWA-III. It does not prescribe age of the minor dependent. The provisions of NCWA-III cannot be compared with provisions in NCWA-IV. The document Exhibit W-1 application submitted by Chhatkunwar for providing employment of her minor son Narendra. In Exhibit W-2 widow was advised that she may get treatment. After she is cured of her illness, her claim may be considered. That if her son Narendra attains majority, she may submit application for employment. Thus claim for employment on compassionate ground of minor Narendra was admitted in Exhibit W-2. The document Exhibit W-4 application submitted by Chhatkunwar was forwarded to General Manager. However claim was not accepted. The reply is filed at Exhibit W-5. That post could not be kept vacant for such long time. As discussed above, NCWA-III do not provide specific age for minor dependent. No time limit is prescribed for employment on compassionate ground in NCWA-III. Therefore refusing employment on compassionate ground by IInd Party management is not legal. It is supported by oral and documentary evidence on record.

9. Learned counsel for IInd Party Mr. Shashi relies on ratio held in:

"Case of Bank of Maharashtra *versus* Manoj Kumar Deharia reported in 2010(3) M.P.L.J 213. Their Lordship help having regard to the exceptional nature of such appointment as it is granted under a special scheme carved out dehors the normal mode of recruitment, the same has to be governed as per the policies or provisions governing such appointment prevalent at a particular point of time when consideration is to be made, and not on the basis of a policy which was in vogue and has been given up by the employer due to changed circumstances."

Ratio held in the case supports claim of Union as Suresh died in 1984 the claim for service of dependents on compassionate ground is covered by NCWA-III and not by NCWA-IV which came in force in November 2000.

In case of Union of India *versus* Bhagwan Singh reported in 1996(I) LLJ 1127. Their Lordship dealing with appointment on compassionate ground. That death of employee in 1972, Tribunal directed reconsideration of the respondent's application rejected by the employer in 1987, 1990 and 1991. The employee left behind besides the respondent two Major sons and his wife, they did not apply for job on compassionate ground. The plea of the respondent for compassionate employment held therefore not to enable the family to tide over the sudden crisis to

the family, resulting from the employee's death in harness Tribunal's order is set aside.

In present case as per document Exhibit W-2. Claim of widow for appointment on compassionate ground was not allowed as she was suffering from illness, she was advised to get treatment, she was also advised that after her son Narendra completes 18 years, application for his employment would be submitted. The claim for employment of Narendra has been wrongly rejected by the management of IInd Party. Said action is not justified. Therefore I record my finding in Point No. 1 in Negative.

10. Point No. 2, In view of my finding in Point No. 1, action of IInd Party refusing employment on compassionate ground to Shri Narendra Singh, S/o Shri Suresh is not justified. The question arises to what relief Shri Narendra Singh is entitled. The application for employment on compassionate ground was submitted on 27-8-93 Exhibit W-3, said claim was forwarded to General Manager, Korba Area. On 20-2-94 Exhibit W-4, there is no specific evidence whether Shri Narendra Singh is employed or unemployed. No evidence is adduced by the management that Shri Narendra Singh is in gainful employment. Considering above aspects, in my considered view, instead of granting full back wages, 25% wages from date of submission of application dated 27-8-93 would be appropriate. Accordingly I record my finding on Point No. 2.

11. In the result, award is passed as under:—

(1) Action of the management of SECL, Bilaspur in not providing employment on compassionate ground to Shri Narendra Singh, dependent son of late Shri Suresh Kumar, Ex-Loader, Banki Colliery is not proper.

(2) IInd Party is directed to take steps for employment on compassionate ground to Shri Narendra S/o Shri Suresh as per NCWA-III within 2 months.

IInd Party shall pay 25% wages from 27-8-93. Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer,

नई दिल्ली, 18 नवम्बर, 2013

**का०आ० 2601.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 144/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/11/2013 को प्राप्त हुआ था।

[सं० एल-22012/212/2002-आईआर (सीएम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 18th November, 2013

**S.O. 2601.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 144/2003 of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, Contractor FCI, and their workmen, received by the Central Government on 18/11/2013.

[No. L-22012/212/2002-IR(CM-II)]

B. M. PATNAIK, Desk Officer

# **ANNEXURE**

## **BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

No. CGIT/LC/R/144/2003

PRESIDING OFFICER : SHRIR.B. PATLE

Shri Pritam Singh Kirar,  
C/o Radhekrishna General Stores,  
Ahmedpur Chouraha,  
Opposite Central Bank of India,  
Vidisha,  
Vidisha (MP)

...Workman

*Versus*

District Manager,  
Food Corporation of India,  
Sagar (MP)  
M/s V.R. Enterprises,  
Contractor FCI,  
Bansluli, Near Ganesh Temple,  
Vidisha (MP)

...Management

# **AWARD**

Passed on this 21st day of October 2013

1. As per letter dated 8-8-2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-22012/212/2002-IR(CM-II). The dispute under reference relates to:

"Whether the action of the management of Food Corporation of India by not following the due process of law while regularizing the contract workers and terminating the services of Shri Pritam Singh Kirar, Shri Gajraj Singh, Shri Nandkishor Sharma. Shri Lokesh Sharma, Shri Diwan Singh Kirar and Shri Baram w.e.f. June 1991 is legal and justified? If not, to what relief the workmen are entitled?"

2. After receiving reference, notices were issued to the parties. Ist Party workman submitted their statement of

claim at Page 4/1 to 4/7. The case of Ist Party workman is that they had raised dispute before ALC, Bhopal claiming that they were engaged as labour by IInd Party FCI for handling transport work. They continued to do said work for 12 hours in Vidisha depot of FCI. That as per judgment by Apex Court, Central Govt. issued notification prohibiting employment of contract labour in process of handling and transport of goods in FCI. That the work in FCI was of perennial nature. FCI decided to execute work of handling transporting goods by contract labour system. FCI entered in agreement with Jena Group of FCI Workers Union for departmentalizing the contract labour system. The Agreement was arrived between Union and FCI is against the object and spirit of the constitutional mandate and statutory provisions. The relevant cause in the agreement provides. The management shall provide biodata forms to the Union for the number of hands so assessed which would be filled in by the workers and furnished by the Union to the management. The biodata so furnished will be jointly examined by the management and the Union. The same bipartite team will ascertain physical fitness and age of the workmen where after the management shall issue identity cards to the workers concerned. It is alleged that the Jena Group of FCI workers Union instead of considering the case of workman was successful in getting the person of its own choice in employment ignoring claim of senior persons for regularization. The Union got employed through favourite persons, outsiders and juniors without following norms of recruitment as per letter dated 31-1-92 issued by Sr. Regional Manager of FCI. That IInd Party did not comply with instructions, letter dated 31-1-92 instead of getting verification by authorities mentioned like gazetted officers, members of parliament or State legislature belonging to constituency or Sub Divisional Magistrate etc. IInd party had clearly included names of Ist Party workman in the original list, their names were struck out. That Writ Petition No. 677/92 filed by the workman was disposed holding that this petition would be governed by the order given in another Writ Petition No. 1416/93. It was observed that order in petition doesnot require any modification because FCI was competent to say that workmen were not entitled to absorption/regularisation. W.P. No. 1171/96 7 MCC No. 78 of 1996 were heard and similar orders were passed. That petition was dismissed with liberty to approach forum under Industrial Law. After failing of conciliation proceedings, the reference was made.

3. The Ist Party workman submits that principle of first come last go has not been followed. Ist Party workman prays for their absorption in FCI.

4. IInd Party filed Written Statement at Page 6/1 to 6/11. It is submitted by IInd Party that if the claim under reference is allowed, it will cause heavy burden on FCI. FCI is dealing with transport and supply of coal particles. It depend on huge subsidy drawn from the public exchequer. Such contractors are appointed for several principal

employers. The labours are engaged by contractor. There is no relationship of employer employee. FCI has no control or supervision on the employees engaged by the contractor. That the Ist Party workman are not covered as workman under Section 2(s) of I.D. Act. All other allegation with respect to demand by Union are denied. It is denied that junior employees, outsiders are regularized/observed through IInd Party. The contractors were professionals, were employing several labours as per need. The workers working in notified depot of the corporation under contractors before abolition of contract system were identified with the help of staff and officers of FCI. Suitable person's state of requirement were induced as departmental workers of the kind prescribed for their department. That letter dated 29-11-91 produced by claimants were not traceable in record of the corporation. IInd Party claims that said letter is fabricated. Ist Party tried to create documents with the help of Asstt. Manager. With respect to judgments in Writ petitions, it is submitted that Hon'ble High Court did not interfere in the matter.

5. IInd Party further submits that while making reference, ALC overstepped his jurisdiction. The Conciliation Authority ignored that the Ist Party workman were not covered under Section 2 of I.D. Act. On all such contentions, IInd Party prays for rejection of claim of workman.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- |   |                     |
|---|---------------------|
| (i) Whether the action of the management of Food Corporation of India by not following the due process of law while regularizing the contract workers and terminating the services of Shri Pritam Singh Kirar, Shri Gajraj Singh, Shri Nandkishor Sharma, Shri Lokesh Sharma, Shri Diwan Singh Kirar and Shri Balaram <i>w.e.f.</i> June 1991 is legal? | In Negative         |
| (ii) If not, what relief the workman is entitled to?  | As per final order. |

### REASONS

7. The claim of Ist Party workman is that contract labour system was abolished by Government in view of judgment by Apex Court. That agreement was settled between IInd Party and Jena Group of FCI Workers Union. Junior persons were absorbed overlooking the senior labour working in FCI. IInd Party denied all those allegation of Ist

Party workman. Affidavit of evidence is filed by workman Nand Kishore Sharma, Balaram Ahirwar, Ratan Singh Kirar, Diwan Singh Kirar, Gajraj Singh, Lokesh, Hukumchand Sharma. Affidavit filed by all workmen were identical that they were working for 10-12 years till 1991. They had completed 240 days continuous service during each of the year. The labours were retrenched at the time of regularizing services, they were not considered. All the six workers (Ist Party) were retrenched without notice, no retrenchment compensation was paid to him. Their services are terminated with violation of Section 25-F of I.D. Act. That they are unemployed. Seniority list were not prepared.

8. Nand Kishore in his cross-examination says since 1983 to 1991, he was working under contractor. Contractors were abolished in 1999. Thereafter his services were discontinued. Balaram in his cross-examination says that he was working in FCI, he was appointed in FCI, his work was supervised by contractor. That his age was 16-17 years in 1990. That for appointment in FCI, minimum age of 18 years is required. He was working under contractor R.R. Enterprises. He denied that he was appointed by R.R. Enterprises. Other labours were working with R.R. Enterprises. There was Union of FCI labours. He had complained against FCI Mazdoor Sangh. They did not receive wage slip from FCI. That he had worked for 10-12 years with FCI. Certificate in that regard was with him. That he had no quarrel with the Union or management.

9. Pritam Singh Kirar in his cross-examination says he was working with contractor R.R. Enterprises and B.R. Enterprises during 1983 to 1991. R.R. Enterprises was the last contractor under whom he was working. His services were discontinued after contract system was abolished. Diwan Singh Kirar in his cross-examination says from 1983 to 1991, he was working under contractor. The wages were paid by contractor. After abolition of contract system, his services were discontinued. Gajraj Singh in his cross-examination says that 10-12 Labours were working under R.R. Enterprises contractor. He was doing cleaning work in the godown. The contract work was discontinued in 1991. Lokesh Sharma in his cross-examination says he was working under contractor Rakesh. Appointment letter in writing was not given to him. He was issued a card. He was working under contractor. His wages were paid by the contractor. The documents Exhibit W-1 I Card of all labours is produced on record. Said Card has been issued on 1-12-87 by Asstt. Manager FCI, Vidisha. Document Exhibit W-2 is letter issued by Sr. Manager of FCI about absorption of contractor's labours. That the Ist Party workmen were not working with contractor. Therefore they were not absorbed.

10. Affidavit of evidence of management's witness Shri W. Ekka is filed. His affidavit is devoted about the activities of FCI and abolition of contract labour. It is stated by the management's witness that its activities are seasonal and temporary in nature. It carries operations. The



corporation usually engaged handling contractors for 2 years. That work of workman was not supervised by the corporation or its officers. There was no specific term of employment between contractors and the workers. In his cross-examination, management's witness says since June 1991, work through contract labour is not done in FCI. When contract labour were working in Vidisha Depot, the contract labours were engaged. The labours working with the management, list was not prepared. His further cross-examination is on the point that contract labour system was abolished, departmental labours were working in the department. Appointment letters were not issued. He also denies that I-Card was issued to the labours working in godown of FCI. Relevant record may in Sagar District Office of FCI. Witness of the management shown willingness to produce said record. No such document are produced.

11. Written notes of argument are submitted on behalf of both the parties. The evidence discussed above shows that contract labour system was abolished in FCI, Vidisha. Document Exhibit W-1 shows that workman were working in FCI depot Vidisha. I Card was issued to them. The management has not produced any document how many contract labours are absorbed/departmentalized when Ist Party workman were working in 1987. Their cross-examination also shows that they were working under contractor of FCI from 1983 to 1991. The IInd Party management has not produced any document regarding absorption/regularization of services of the labours working through contractor. Evidence of Ist Party workman that they were working till 1991, their services were discontinued without notice or paying retrenchment compensation is not shattered in cross-examination of the workman. When the contract system was abolished, the workmen were entitled to be regularized. However they were not regularized, their services were discontinued by contractor. Therefore I record my finding in Point No. 1 in Negative.

12. Point No. 2, In view of my finding in Point No. 1 that the action of IInd Party in not regularizing services of Ist Party workman is illegal, question arises to what relief the workmen are entitled? It is correct that those workmen were not engaged by FCI, there was no direct relationship of employer employee. Those employees were engaged through contractor. On abolition of contract labour system in FCI, in 1991, workmen have been regularized/absorbed, those workers were not absorbed in FCI. Since 1991, Ist Party workmen are out of employment. Their evidence is not disclosing what they were doing during all those years for their survival. All those workmen must be working some where therefore claim of back wages cannot be allowed. However the claim of Ist Party workmen for absorption in FCI is justified. I hold and pass following award.

13. In the result, award is passed as under:—

(1) Action of the management of Food Corporation of India by not following the due process of law while regularizing the contract workers and terminating the services of Shri Pritam Singh Kirar, Shri Gajraj Singh, Shri Nandkishor Sharma, Shri Lokesh Sharma, Shri Diwan Singh Kirar and Shri Balaram *w.e.f.* June 1991 is illegal.

(2) IInd Party FCI is directed to absorb Ist Party workmen as its labours but without back wages.

R.B. PATLE, Presiding Officer

नई दिल्ली, 18 नवम्बर, 2013

का०आ० 2602.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स वेस्टर्न कोलफील्ड्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 221/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/11/2013 को प्राप्त हुआ था।

[सं० एल-22012/331/1995-आईआर (सी-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 18th November, 2013

**S.O. 2602.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 221/98 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of WCL, and their workmen, received by the Central Government on 18/11/2013.

[No. L-22012/331/1995-IR (C-II)]

B. M. PATNAIK, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/221/98

PRESIDING OFFICER : SHRI R.B. PATLE

The Vice President,  
L.C.M.M. Union (CITU),  
Damua,  
PO Damua,  
Distt. Chhindwara (MP)

...Workman/Union

*Versus*

Sub Area Manager,  
Damua Group of WCL,  
PO Damua,  
Distt. Chhindwara (MP)

...Management



**AWARD**

Passed on this 17th day of October, 2013

1. As per letter dated 28-9-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/331/95-IR(C-II). The dispute under reference relates to:

"Whether the action of the management of Damua Colliery, WCL in not correcting the date of birth of Shri Babulal S/o Shri Chandulal, Line Mistry is legal and justified? If not, to what relief is the workman concerned entitled?"

2. After receiving reference, notices were issued to the parties. Ist Party workman filed statement of claim at Page 3/1 to 3/5. The case of workman is that he is employed as Line Mistry at 22.23 Incline, Damua Colliery of WCL. He was initially appointed on 3-12-1975. He was promoted to higher post time to time and was working as Line Mistry. He had received education at Anjangaon Surji from 2-5-1963 to 10-4-71. He studied upto 9th standard. In 1971, he left school. At the time of entering in service, he submitted original School Leaving Certificate to colliery authorities. His date of birth was recorded in service record as 4-12-1951. Same date of birth was recorded in record maintained by the company. In October, 1994, Ist Party workman came to know that some alterations have been made in his date of birth in service record. He immediately approached the IInd Party. He perused records. He was surprised to see that his date of birth was altered as 16-7-46 instead of 4-12-51. He had approached management about alteration in service record. That management assured him that his date of birth will be corrected within 15 days. However workman did not recieved any information regarding review of his date of birth. On 12-12-94, he submitted representation to Sub Area Manager for correction of his date of birth as 16-7-46 instead of 4-12-51. The management did not care for correction of his date of birth therefore he had approached to ALC and ultimately reference has been made. That if his date of birth is not corrected, he would be retired 5 years before completion of retiring age. On such grounds, he prays for correction of his date of birth as 16-7-46.

3. IInd Party management filed reply at Page 6/1 to 6/4. The relief prayed by workman is opposed. Management submits that workman was appointed as General Mazdoor on 8-3-75. That he was working as Mistry in Incline No. 22-23 of Damua Colliery of WCL. Under Mines Legislation, appointment orders are issued to the employee, his name is recorded in various statutory records like Form B register, service record of each employee is maintained. Form B register and service record contains full particulars of the employees including date of birth, qualification, address etc. that after initial appointment of Ist Party workman, his

date of birth was recorded as 16-7-46 as declared by the workman. He would be retired on attaining age of 60 years on 16-7-06. The IInd Party management denied that date of birth of workman was altered in Form B register, service record. According to the management, the date of birth of workman was recorded as 16-7-46 in Form B register, service record, family pension form, declaration for Provident Fund etc. Other contentions of workman are denied. It is submitted that there is no discrepancies in the entries of date of bith in record maintained by management. Workman did not produce his documents required as per implementation instruction No. 37 & 76. Workman had failed to produce any document with regard to proof of his correct date of birth when he entered in service or when objections were invited in 1987, therefore the claim of workman is not tenable. On such grounds, management prays for rejection of claim of workman.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of Damua Colliery, WCL in not correcting the date of birth of Shri Babulal S/o Shri Chandulal, Line Mistry is justified? In Affirmative

(ii) If not, what relief the workman is entitled to?" Relief prayed by workman is rejected.

**REASONS**

5. The workman is praying for correcting of his date of birth as 16-7-46 instead of 4-12-51. He submits that his alterations were made in his date of birth. In record maintained by management, his date of birth was recorded as 16-7-46.

6. Workman filed affidavit of his evidence. He has stated that his date of birth is 4-12-1951. He born at Surji, Distt. Amravati in Maharashtra. He received education in Ist Standard on 2-7-58 in Municipal Marathi School. He continued education in said school till 1963. He had received School Leaving Certificate. His date of birth is 4-12-1951. He received further education from standard Vth to IXth at High School at Anjani. He left the school because of ill-health and poverty on 30-4-71. He has further stated that his date of birth was recorded in LIC policies, in PAN Card. He had taken objection to his date of birth on 31-8-82. He had produced all the documents at that time. However his date of birth was not corrected. In his cross-examination, workman says that he had not received appointment letter in writing, he was working under Line Mistry Nathulal. He did not ask his age. In 1978, he was appointed but appointment letter was not given. He had not stated his date of birth to concerned clerk preparing his service record. He admitted his thumb mark and documents No. 6/5, 6/6, 6/7. In 1987, he received letter from

department regarding objection of his date of birth. The document in Serial No. 6/10 is said letter. Ist Party workman says that he had submitted written objection. Its zerox copy is produced by him. That when he left his school, his age was 18 years. If the said period is calculated, his date of birth would may come 1953 as he left school in 1971. In the documents produced by workman Exhibit W-1, his date of birth is shown as 4-12-1951. Exhibit W-2 School Leaving Certificate, same date of birth is shown. The date of leaving school is shown 30-4-71 in both documents Exhibit W-2 & W-2(a). In Exhibit W-3, his date of birth is shown as 4-12-1951. In Exhibit W-4, LIC Policy, same date of birth is recorded. In Exhibit W-5, W-6 is letter given by management to workman calling objections about Implementation Instruction No. 37. Document Exhibit W-7 is application submitted by workman for correction of his date of birth on 12-12-94.

7. The evidence of management witness Shri Chandra Pratap Tiwari is by way of denial of the date of birth. Witness of the management has stated that date of birth as furnished by workman himself is 16-7-1946 in service card and other declaration submitted by workman. The workman has not submitted documents for correction of date of birth when letter was issued by management inviting objection. Management's witness in his cross-examination says that he had seen Instruction No. 37 for resolving the dispute. The instructions were implemented in 1981. Instruction No. 76 was implemented from 1986. That income tax was deducted as per Pan Card. He had not seen date of birth on PAN. The appointments were made as per recruitment rules considering the educational qualifications, date of birth etc.

8. Case of the workman is that his date of birth was altered fictitiously. At the time of argument, learned counsel Shri A.K. Shashi for management pointed out that documents Exhibit W-1 to W-2 are duplicate. Workman was employed in 1978. The reasons for producing duplicate school leaving certificate are not explained. Date of birth in LIC policy and PAN card are recorded on declaration of workman himself. There was no reason to obtain duplicate School Leaving Certificate. Unless original is lost, there was no reason for obtaining duplicates. The evidence of workman doesnot show any reason how his date of birth was recorded as 16-7-46 in documents and in service book, nomination for payment of gratuity, declaration for Provident Fund produced by the management. Ist Party workman has admitted his thumb mark and signature. No evidence is adduced by workman about fictitious alteration of his date of birth. The documents produced by workman in the year 1988, 2003, 2004 obtaining duplicate School Leaving Certificate appears suspicious. The evidence of workman is not cogent and reliable.

9. Learned counsel for IInd Party Mr. Shashi relies on ratio held in :

"Case of CAT-1989-LAB.I.C. 700. It is held that

correction of date of birth of employee accepting date of birth as recorded in service roll at time of appointment. No protest against date of birth shown in gradation lists. Representation for correction of date of birth made only when notice of retirement declaring date of superannuation served. Employee not entitled for correction of date of birth."

10. Ratio held in :

"Case of G.M. Bharat Coking Coal Ltd. West Bengal *versus* Shib Kumar Dushad and others reported in 2000(8) Supreme Court Cases 696. Their Lordship held dealing with the judicial review of the determination of date of birth held where question regarding correctness of date of birth as entered in service record raised by employee longafter his joining the service and the employer decided the question following the procedure prescribed by statute, statutory rules or instructions, held, in absence of any arithmetical or typographical error apparent on the face of the record, High Court should not interfere with such decision of the employer in exercise of its extraordinary jurisdiction under Article 226. It was held that management correctly referred the matter to Medical Board and accepted determination of age of the employee by the Board in accordance with the procedure laid down under its instructions."

11. Copy of Implementation Instruction No. 76 is produced at Exhibit W-1. The review of determination of date of birth in respect of existing employees holding matriculation certificate is provided under Sub Para (B) i(a).

"In Para-ii, it is provided wherever there is no variation in records, such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the management. The management after being satisfied on the merits of the case will take appropriate action for correction through Determination Committee/Medical Board. Para-(C) provides Age Determination Committee/Medical Board for the above will be constituted by the management. In case of employees whose date of birth cannot be determined in accordance with the procedure mentioned in (B)(i)(a) or (B)(i)(b) above, the date of birth recorded in the records of the company, namely Form B register, CMPF Records and Identity Cards will be treated as final provided that where there is a variation in the age recorded in the records mentioned above, the matter will be referred to the Age Determination Committee/Medical Board constituted by the management for determination of age."

12. Workman is not asking for deciding his date of birth by the Committee or Medical Board. The documents

produced by him are subsequent in time and duplicate School Leaving Certificate. Therefore claim of workman cannot be accepted. For above reasons, I record my finding in Point No. 1 in Affirmative.

13. In the result, award is passed as under:—

- (1) Action of the management of Damua Colliery, WCL in not correcting the date of birth of Shri Babulal S/o Shri Chandulal, Line Mistry is proper.
- (2) Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 18 नवम्बर, 2013

**कांआ 2603.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स कोल इण्डिया लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गुवाहाटी के पंचाट (संदर्भ संख्या 7/2008 और 13/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/11/2013 को प्राप्त हुआ था।

[सं० एल-22012/65/2008-आईआर (सी एम-II),

सं० एल-22012/60/2008-आईआर (सी एम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 18th November, 2013

**S.O. 2603.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 07/2008 & 13/2008 of the Cent.Govt.Indus.Tribunal-cum-Labour Court, GUWAHATI as shown in the Annexure, in the industrial dispute between the management of Coal India Limited, and their workmen, received by the Central Government on 18/11/2013.

[No. L-22012/65/2008-IR (CM-II),

No. L-22012/60/2008-IR(CM-II)]

B. M. PATNAIK, Desk Officer,

#### ANNEXURE

#### IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

Present: Sri L.C. Dey, M.A. LL.B.,

Presiding Officer,

CGIT-cum-Labour Court, Guwahati,

In the matter of an industrial Dispute between:  
The Management of Coal India Ltd., Tinsukia, Assam.

-Vrs-

Their Workman Sri Nasir Hussain.

Ref. Case No. 07 of 2008 &

Ref. Case No. 13 of 2008.

#### APPEARANCES

For the Management: Mr. M.Z. Ahmed, Sr. Advocate.  
Mr. A.M. Dutta, Advocate.

For the Workman: Mr. A.Dasgupta, Advocate.  
MR. K.M. Haloi, Advocate.

Date of Award: 30.10.2013

1. This Reference is arising out of an Industrial dispute exists between the Management of Coal India Limited and their workman Sri Nasir Hussain, which was referred to by the Ministry of Labour, Government of India vide their Order No. L-22012/60/2008-IR(CM-II); Dated 30/06/2008, under Section 10(1) (D) of Industrial Dispute Act. The Schedule of the Reference is an under:

#### SCHEDULE

"Whether the action of the management of Coal India Limited in dismissing Shri Nasir Hussain from service *w.e.f.* 26.07.2004 is legal and justified? To what relief is the claimant entitled?"

2. On receipt of this order from the Ministry this Reference case has been registered and notices were served upon both the parties for filing their respective claim statements/written statements along with relevant document before the Tribunal with direction to both the parties to exchange their respective copies of Claim Statement/Written Statement and documents between them. Accordingly both the parties appeared and contested the proceeding filing their respective claim statement/written statement. In the mean time another order being No. L-22012/65/2008-IR (CM-II) dated 05.11.2008 has been received from the Ministry of Labour, Government of India referring an Industrial Dispute exist between the employer in relation to the Management of Coal India Ltd. and their workman in respect of the matter specified in the Schedule which was registered being Reference case No. 13/2008 in respect of the same issue between the same party. Accordingly upon hearing both the parties and on perusal of the schedule reference made in both the cases the Reference Case No. 13/2008 has been amalgamated with the present Reference.

3. The case of the workman Sri Nasir Hussain, *inter-alia*, is that he was an employee of North Eastern Coalfields under the Coal India Limited and served as a coal cutter in Ledo Colliery having Employee No. 31197. The coal cutting is a very dangerous job as the coal cutter is to perform the job by entering into the deep wells of coal mine. The coal India Limited has the scheme to provide alternative job like the job of General Mazdoor to such employees who are not physically fit to work as coal cutter and the workman Nasir Hussain was not physically fit to work as coal cutter for



which he approached the Management on several times to change his job from coal cutter to General Mazdoor but the Management did not pay heed to it. The Management initiated a disciplinary proceeding on the charges with the misconduct of continuous and habitual absenting from duty without any sanctioned leave and sufficient cause from 10.11.2003 framed under clause 26.24 and 26.30 of the Standing Order. Charge Sheet was issued to the workman on 3.2.2004 and one Bikul Barthakur was appointed as Enquiry Officer. Accordingly an ex-parte enquiry was held on 20.7.2004 and on that day the Management after recording the statement of their witness Sri Dulal Deb and the presenting Officer, the Enquiry Officer submitted his findings holding that the present workman guilty of the charges as mentioned above. Based upon the said enquiry report the workman was discharged from his duty by the Personnel Manager, North Eastern Coal Fields, Coal India Limited on 28.07.2004 *w.e.f.* 26.07.2004.

The workman pleaded that the charges framed against him are not proved and he was not given any opportunity to submit reply to the said charge sheet. Even no notice regarding the enquiry held on 20.7.2004 was served upon the workman. Had it been served upon the workman he must have appeared before the Enquiry Officer. Although the Management stated that the notice for appearance of the present workman before the Enquiry Officer was published in the vernacular Newspaper 'Danik Janambhumi' but the workman lives in the remote area where newspapers hardly reaches and being very poor person it is a beyond his ability to access a newspapers. As such, it is crystal clear that if the notice had been published in the said newspapers also, it was not possible on the part of the workman to come across it. He also mentioned that there was no opportunity to have examined himself as well as to cross examine the Management witness. Further before discharging the workman the Management did not serve a copy of the enquiry report to him for submission of his representation to the Management. Therefore, it is clear that the enquiry was in gross violation of principle of Natural Justice. As the workman was deprived of his opportunity to present his case before the Enquiry Officer although he was entitled to be represented by his co-worker, and to adduce evidence in support of his case, he was deprived of his due opportunity and hence, question of cross-examination did not arise as the enquiry was an ex-parte one with all procedural irregularity, illegality and unfairness.

The workman again stated that the Management did not take adequate step to serve the charge sheet on the workman and hence, the enquiry was void abinitio. The workman being a member of the Rashtriya Coal Mazdoor Union functioning in the North Eastern Coalfields with the support of the majority of the workers, on being aggrieved by the action of the Management in discharging him from service, approached the Union for his reinstatement with

consequential benefits while the Union demanded for reinstatement of the workman with full back wages but the Management did not pay heed to it. Thereafter the Union raised this Industrial Dispute before the conciliation Officer who initiated the conciliation proceeding but the dispute could not be settle. Accordingly the Conciliation Officer submitted his FOC as contained in Section 12(4) of the Industrial Dispute Act, 1947 before the Appropriate Government.

The workman again stated that due to unavoidable circumstances beyond the range of control the workman could not perform his duties he has been illegally discharged and as such, he is entitled to be reinstated with full back wages. Hence, the workman prayed to pass an award in his favour directing the management to reinstate the workman with full backwages and/or pass any further or other award as this Tribunal deem fit and proper.

In his additional claim statement the workman stated that he was appointed in the North Eastern Coal Field under Coal India Limited as coal cutter in Ledo Colliery on 4.5.1998. He denied the contention of the Management made in paragraphs 5,7,9,10,11,12,13,14 and 15 of their written statement.

4. The Management, on the other hand, submitted written statement stating, *inter-alia*, that the Coal India Ltd. is a Government of India undertaking duly registered under the Indian Companies Act, 1956, engaged in the business of Coal mining in various parts of the country, and the North Eastern Coalfields is a subsidiary unit of Coal India Limited which is owning and managing amongst others, the Coalfields/Mines situated in the North Eastern region of the country. The workman Nasir Hussain was appointed as a daily rated employee and engaged as a Coal Cutter (Trainee) in the North Eastern Coalfields, Margherita and the said employee was a habitual absentee and he had remained absent on a number of occasions for which he was issued cautioned letter and was even imposed punishment for the same. Caution letters issued against the workman on 16.2.1999, warning letters were issued on 17.6.1999, 15.5.2002, and even punishments were imposed for the period of 10 days suspension on 21.10.1999, and 02.06.2000 each and stoppage of increment without cumulative effect for 5 years on 11.09.2003. The Management mentioned that inspite of the issuance of caution letters imposition of punishment on the workman, as aforesaid the workman did not care to improve his attendance and remained continuously absent from the duty with effect from 10.11.2003 without any sanctioned leave or prior permission from the competent authority which amounts to "gross misconduct" under the Standing Order of North Eastern Coal Fields. The details of physical attendance of the workman during last 5 years of his service is 71 days in the year 2000; 40 days in the year 2001; 46 days in the year 2002; 44 days in the year 2003; no attendance in the year 2004 and 2005.



The Management having no other alternative proposed to initiate an enquiry against the workman and issued a Charge Sheet being No. 42/PIR/167 dated 03.02.2004 for violation of Provision of Clause 26.30 and 26.24 of the Standing Order which reads as under:—

"Clause 26.24= Habitual late attendance or habitual absence from duty without sufficient cause.

Clause 26.30= Absence from duty without sanctioned leave or sufficient cause or overstaying beyond sanctioned leave".

The notice was served to the workman on 04.02.2004 giving him 7 days time from the date of receipt of the charge sheet, to submit his written explanation as to why disciplinary action should not be initiated against him and Sri Bikul Barthakur, SE (Civil), Margherita and Sri D. Choudhury, Sr. Executive Engineer (C), Ledo Colliery were appointed as Enquiry Officer and Presenting Officer respectively. But the notice dated 04.02.2004 could not be served on the workman as he was not found in station and hence, second notice was sent to him on 28.4.2004 requesting him to be present in the enquiry to be held in the Office of the Agent, Ledo Colliery on 07.05.2004 but the same could not be served upon the workman as he was not located on 04.05.2004 and third notice was sent through Registered Post with A/D which also could not be served upon the workman as his home address could not be located and the letter was returned with the endorsement as "addressee not known" and addressee "not found". Thereafter the Management, having no other option published the charge sheet and the Notice in a local newspaper namely 'Janambhumi' on 02.07.2004 fixing the date of enquiry on 09.07.2004 at 9 AM in the Office of the Superintending Engineer (Civil), Margherita and requiring the workman to be present on that date failing which enquiry would be proceeded ex-parte but the workman did not appear in the enquiry held on 09.07.2004 and the same was proceeded ex-parte wherein the workman was found guilty of the charge framed against him. Thereafter the Management, on the basis of the said departmental enquiry and considering the gravity of the offence by way of an order dated 28.07.2004 discharged the workman from the service of the North Eastern Coalfields under Clause 27.1(g) of the Standing Order applicable to the workman.

The Management averred that inspite of numerous caution letters and punishment imposed on the workman, the workman did not improve his attendance and remained continuously absent from duty with effect from 10.11.2003 without any sanctioned leave or permission from the competent authority which amounted to gross misconduct under the Standing Orders of North Eastern Coalfields; and the workman also failed to appear before the enquiry proceeding and defend himself inspite of being offered ample opportunities to do so. Hence, it is evident from the conduct of the workman that he was not at all interested to

work for the Company and the Company in no way support an unproductive employee such as the employee like the workman who has otherwise become a burden on the Company and as such, the Management had rightly issued impugned order and hence, there can be no reason for this learned Tribunal to interfere with the order impugned, and the claim of the workman is liable to be rejected. It is also pointed out by the Management that since the management has duly followed the procedure prescribed by law and had issued the impugned order as per law complying with all the requirements and also conducted the departmental enquiry in accordance with law; as the workman has miserably failed to make a case warranting interference by this Tribunal; the workman is not entitled to any relief as claimed. Under the above circumstances, the Management prayed to reject the claim of the workman after hearing both the sides.

In their additional written statement the Management averred that the workman was appointed in place of his mother who had taken VRS under Special Female Voluntary Retirement Scheme and the workman was allowed to join on duty only after receipt of letter of acceptance to work as a piece rated worker in underground Mines by the Company; and as per the directive/guidelines of Coal India Ltd. in case of Special Family Voluntary Retirement Scheme, the job offered to the dependent (son) is restricted only to underground piece rated mines/loaders and as such, the claim of the workman to change his job from coal cutter to General Mazdoor is not acceptable to the Company. The Management also mentioned that the departmental enquiry was held on 09.07.2007 and not on 20.07.2007 as claimed by the workman, and the workman was staying in Mazid Colony, P.O. Margherita town and newspaper are easily available in the said locality and the workman could have easily obtained the said vernacular newspaper *i.e.* Dainik Janambhumi dated 02.07.2004. As the workman did not appear before the Enquiry Officer inspite of the Press Notification, the Management has not served him the enquiry report before awarding the punishment; and inspite of issuance notices for appearance and attending the enquiry proceeding on 3 occasions and lastly by publishing in newspapers the claim of the workman is not sustainable in law.

5. The workman examined two witnesses including himself as W.W.1 and Mr. Swapan Roy, the General Secretary of the Rastriya Coal Mazdoor Union, Tinsukia as W.W.2, while the Management examined Rajen Kumar Dutta, chief Manager (Personnel), North Eastern Coal Fields, Coal India Ltd., Margherita as MW.1. Both the parties have proved and submitted the documents relied upon them.

Let me discuss the evidence adduced by both the sides along with the documents relied by them. The workman Nasir Hussain, hereinafter called the workman witness No 1 (W.W.1) stated that his father was an employee

of the Coal India Ltd. and after death of his father his mother Smt. Sabarun Khatun was engaged as an employee of the Coal India Ltd in Ledo Colliery and served as Peon who accepted Voluntary Retirement due to her old age ailment in the year 1998 and in terms of the Female Voluntary Retirement Scheme he was appointed on 29.04.1998 as piece rated worker in Coal India Ltd., North Eastern Coalfields at Ledo Colliery. Having declared medically fit he joined the duty on the same day i.e. on 29.04.1998. After his joining he was engaged as Coal Cutter and he had to perform the job by entering into the deep well of the Coal Mine. The Management of Coal India Ltd. has the scheme to provide alternate job of General Mazdoor as such employees who are not physically fit to work as coal cutter as the job of coal cutter is very dangerous and all people are not fit for performing the said job. Apart from this as per the National coal Wage agreement arrived at between the management of Coal India Ltd. and Union, no employee is to be engaged in the job of coal cutting at the time of initial joining as this job requires expertise skill; and as he was not fit to work as coal cutter he approached the Management to engage him in alternative job like General Mazdoor. Accordingly he was engaged temporarily as Mazdoor for two months and again he was engaged in coal cutting job resulting in his illness for several occasions for which he could not attend his duty sometimes which he informed the Management as to his absence submitting sick certificate. The workman mentioned that the charge sheet dated 03.02.2004 issued against him by the Management that the charges of his misconduct and continuous and habitual absence from duty without any sanctioned leave or sufficient cause from 10.11.2003 was not served upon him at any point of time; and he was also not given any opportunity to submit his reply to the charge sheet nor the findings of the enquiry proceeding was furnished to him so that he could submit representation against the said findings of the enquiry proceeding. He also added that in terms of the said charge sheet an ex-parte enquiry was held on 20.07.2004 and he was held guilty of the said charge but he was not provided any opportunity to be heard in the enquiry proceeding. He also added that he had noticed no newspaper publication regarding the aforesaid enquiry as he resides in remote place. Thus the management arbitrarily and in gross violation of natural justice discharged him from service with effect from 26.07.2004 on the basis of the ex-parte enquiry as he was deprived of due opportunity to present his case before the Enquiry Officer before whom he could represent through any co-worker. He was also provided with opportunity to examine himself and to cross-examine the Management witnesses. hence, he was illegally discharged by the Management.

During his cross-examination the workman Nasir Hussain stated that his house is situated at a distance of 8 K.M. from his place of work and about 2 and 1/2 K.M. from his Head Office and as area is covered under the Post

Office which adjacent to his Head Office. He also said that he received the letter relating to his discharge through his brother and before that he was not in receipt of any letter. he admitted that he was discharged from his service due to his absenteeism from duty and he submitted prayer before the Authority showing cause of his absent but he did not produce any letter or representation to that effect nor did he produce any document to show his illness though it was submitted before the management. He also did not mention anything to show that he met an accident.

He was appointed as coal cutter having been found fit on medical test. But after joining his service he was asked to do the job of coal cutter which was not permitted by his health and he was examined by management's Doctor while he felt sick and he prayed before the authority to change his nature of duty as General Mazdoor. The workman again said that he informed verbally about his illness to the management and also he submitted sickness certificate. The workman admitted that he never applied for leave in writing, and he denied the suggestion tendered by the Management that he remained absent from duty for 71 days, 40 days, 46 days, 44 days and entire year from the year 2000, 2001, 2002, 2003, 2004 respectively. The workman mentioned that while he was posted outside the coal mine he used to remain present all the time. He does not know whether he was issued caution letter/warning letter/suspension order and stoppage of increment etc. He categorically mentioned that he was never suspended during his service period nor his increment was stopped. He also did not know if any departmental proceeding was initiated against him nor did he receive letter from the Post Office about the initiating of the departmental proceeding nor any publication was made by the Management in this regard. The workman has proved the appointment letter issued by the Management *vide* Exhibit-1 wherein Exhibit-1(1) is the signature of the then personnel manager, Mr. P.N. Gowala, which he knows; the joining report issued on 29.4.1992 by the personnel Manager, North Eastern Coal fields, Coal India Ltd., Margaritha *vide* Exhibit-2 and the charge sheet marked as Exhibit-3.

Sri Swapan Roy, (WW.2) in his evidence stated that as General Secretary of the Rastriya Coal Mazdoor union, Tinsukia, he has been representing the workman in this Reference and he is well acquainted with the facts and circumstances of the case. He mentioned that the workman Nasir Hussain was appointed in the year 1998 in the North Easter Coal Field under the Coal India Ltd. on compassionate ground and he was a General Mazdoor. He also said that a mazdoor at his initial stage of service is not allotted with the jobs of dangerous occupation; and initially Mazdoor is entrusted with the job of trimming, cleaning of drains, fitter helper, timber mazdoor helper, pump operator helper and after acquiring experience of a mazdoor is trained to perform the job which are dangerous in nature such as, coal cutting job. As the persons engaged in coal cutting

are required to enter into the deepest part of the coal mine and to cut the coal manually which requires training for a period of minimum six months, but the workman is not a trained person for coal cutting job while he was allotted with the job of coal cutting from the date of his initial appointment. The W.W. 2 further stated that in course his job of coal cutting the workman felt sick several times and he was suffering from occupational disease. While the workman informed the management about his sickness and applied for change of his duty. But the Management did not pay heed to it and he was absent from duty with due leave. The W.W.2 again mentioned that the workman was discharged from his duty on 28.7.2004 after holding an ex-parte enquiry on 20.07.2004.

In his cross-examination he confirmed that the workman had been their member since after joining under Management and the workman resides at Margaritha. The MW.2 added that the workman used to remain absent from duty from time to time since 2002 to 2004 due to his ailment and so far he knows the workman applied leave for absence, but he did not submit any paper to show that the workman applied for leave. He also added that the workman was examined by the Coal India Doctor and the Margaritha Post Office is situated at a distance of 2 K.M. away from the house of the concerned workman. He denied the suggestion put forward by the Management that before filing charge sheet the Management issued caution/warning letters to the workman. He said as per the Standing Order, if an employee intentionally remains absent from duty it becomes within the ambit of misconduct; and that no leave application is required in case of medical leave and it is the duty of the attending Doctor to inform the authority about illness of the workman. He contended that the order of dismissal was illegal and arbitrary and hence, the workman is entitled to be reinstated with full financial benefits.

6. The Management witness, herein after called MW.1, Mr. Rajen Kumar Dutta, Chief Manager (Personnel), North Eastern Coalfields, Coal India Ltd., Margheratia and he was duly authorized to swear evidence-on-Affidavit on behalf of the Management as he is fully acquainted with the facts and circumstances of the case. According to the MW.1 the workman was appointed as Piece rated worker and engaged as coal cutter on 04.05.1998 *vide* employee No. 31197, in place of his mother who had taken Voluntary Retirement Scheme under special Female Voluntary Retirement Scheme and the workman was allowed to join his duty after receipt of his letter of acceptance to work as a Piece rated worker in underground mines. But the workman was habitual absentee who had to remain absent on various occasions for which he was issued caution letter on 16.2.1999 warning letter on 17.6.1999 & 15.5.2002 and even imposed punishment for the same. On 17.06.1999 and 15.5.2002 warning letter was issued against the workman, while on 16.02.1999 caution letter was issued upon the

workman; and punishment was imposed against the workman such as, 10 days suspension order was issued on 21.10.1999 and again 10 days suspension was imposed upon the workman on 02.06.2000 and lastly on 11.9.2003 stoppage of increment without cumulative effect for 5 years was imposed against the workman. The said witness also mentioned that the workman attended his duty for 71 days, 40 days, 46 days, 44 days, in the year 2000, 2001, 2002, 2003 and 2004 respectively and in the year 2004 his attendance was nil. Having no other alternative the Management proposed to conduct an enquiry and issued charge sheet No. 42/PIR/167 dated 03.02.2004 (Exhibit-C) & notice against the workman for violation of Clause 26.30 and Clause 26.24 of the Standing Order and notice was sent to the workman on 04.02.2004 giving him 7 days time from the date of receipt of the charge sheet to submit his written explanation as to why disciplinary action should not be initiated against him. But the said notice could not be served on the workman as he was not found at the station, and thereafter the second notice was sent to the workman on 28.4.2004 marked as Exhibit-D requesting him to remain present in the enquiry to be held against him on 7.5.2004 and the said notice also could not be served upon the workman as he could not be located. Then on 04.05.2004 *vide* Exhibit-E a third notice was issued by the Enquiry Officer by Registered Post with A/D *vide* Exhibit-F which was also not served upon the workman as his home address could not be located and the said notice returned with endorsement as "addressee not known" and "addressee not found". Since the notice could not be served on the workman, having no other option, the Management, published the Charge Sheet and the Notice in a Local Newspaper, namely, 'Janambhumi' on 02.07.2004 *vide* Exhibit-G fixing the date of enquiry on 09.07.2004 at 9 A.M. in the office of the Superintending Engineer (Civil), Margaritha and requiring the workman to be present on that day failing which the enquiry would be proceeded ex-parte. But the workman did not appear in the enquiry held on 09.07.2004 in spite of the Press Notification as aforesaid and the enquiry was proceeded ex-parte, wherein the workman was found guilty of the charge framed against him. The witness concerned has proved the enquiry proceeding marked as Exhibit-H. The M.W.1 also proved the caution letter, warning letter and punishment imposed on the workman as well as his physical attendance for the year 2000, 2001, 2002, 2003 and 2004 *vide* Exhibit-A series and Exhibit-B series respectively. Thereafter the Management on the basis of the report of the departmental enquiry, considering the gravity of the offence, by way of order dated 28.07.2004 *vide* Exhibit-I from the service of the North Eastern Coal Fields under Clause 27.1(g) of the Standing Order applicable to the workman. The Management witness No.1 against said that in spite of numerous caution letters and punishment imposed upon the workman, the workman did not care to improve his attendance and remain continuously absent from duty with effect from 10.11.2003 without any



sanctioned leave or permission from the competent authority which amounted to gross misconduct under the Standing Order of North Eastern Coalfields; and inspite of offering ample opportunities to the workman to appear in the enquiry proceeding and to defend himself the workman did not appear who was staying in Maszid Colony near the Margherita town and newspapers are easily available in the said locality and the workman could have easily obtained the said vernacular newspaper *i.e.* Dainik Janambhumi dated 02.07.2004 as the workman studied upto Class-IX as per the record of the Management.

In course of his cross-examination the Management witness No. 1 stated that the piece rated workers are entrusted by the Management for cutting coal and their wages are paid on the basis of the rate fixed by the specific measured pieces; and that as per the direction of the Management the Chairman of Coal India Ltd. only has the power to entrust a mazdoor from piece rated worker to daily rated worker in the event of finding said piece rated workers unfit for performing the job. He also mentioned that there is no such Scheme in their establishment that initially a worker can not be engaged as piece rated (coal cutter) and in other coal fields of Coal India Ltd. the piece rated workers include coal cutting, loading etc. Also there is a decision of CMD meet of Coal India Ltd. that the son under Female Voluntary Retirement Scheme are appointed only as piece rated worker but he had not produced any document in support of his statement. He also said that in case of ailment of the piece rated worker on the basis of the certificate issued by the Company Medical Officer the said worker is very temporarily engaged daily rated worker in any other light duty. He categorically denied the suggestion that when the workman Nasir Hussain became ill he was give light duty temporarily and during that period the workman discharged his duty satisfactorily. He also did not know whether the workman submitted any representation with prayer for conversion his duty from piece rated worker to daily rated worker for light duty, but the Management did not engage the workman as daily rated worker instead of piece rated worker after issuance of sick certificate by the Medical Officer of Coal India Ltd. He also said that the extract from the Attendance Register in respect of the attendance of the workman marked as Exhibit-B series was prepared by the dealing clerk but they have not produced the original Attendance Register which was duly signed along with some remarks entered into the loose leaf sheets which are not the Attendance Register prepared on the basis of the Attendance Register and they are maintaining this procedure all along. He also said Standing Order has been produced before the Court but he has not produced the original or certified copy of the same. He again mentioned that the Charge Sheet sent to the workman through their Office Peon but finding the workman absent they issued the Charge Sheet by ordinary Post and

finally by Registered Post and yet the same could not be served and the letters returned with report that the addressee could not be found, but he could not recollect the name of the Peon who was entrusted to serve the Charge Sheet and notice nor did he produce the Peon Book before the Court. He further mentioned that the enquiry proceeding along with the findings was forwarded to the workman by Post but the same was returned for non receipt by the workman but he has not produced any document to the effect that the enquiry report along with finding returned unserved. He admitted that they have not furnished the copy of the proposed punishment to the workman, and denied the fact that the workman was not absent for a long period without any authority and that he was dismissed illegally. The Management witness said that the Post Man who returned the unserved letter/Notice with endorsement stating "not found" and "addressee not known", was not examined in course of enquiry proceedings nor in the present proceeding. He admitted that there is some discrepancy in respect of the Attendance Register of the workman pertaining to the month of October, 2003 between the Attendance Sheet (LLS) in page 16 of Exhibit-B series and the report submitted by the concerned time keeper marked as Exhibit-H series in (at page-28); and in Exhibit-B Series (at page-16) the entries made in column-4 is not proper and complete. The suggestion tendered by the workman that the Management has applied hire and fire policy in dealing with the workman.

7. On careful scrutiny of the evidence on record along with the documents, it appears that the workman Nasir Hussain was engaged as daily rated workman as coal cutter in North Eastern Coal Field, Coal India Ltd. having his workman No. 31197, in place of his mother who had availed Voluntary Retirement Scheme under Special Female Retirement Scheme. The contention of the workman is that the coal cutting is a very dangerous job which is to be performed entering into the deep well of coal mine and he was not fit to work as coal cutter for which he became ill and he approached the Management for engagement in alternative job like general mazdoor; and the Coal India has the scheme to provide alternative job of general mazdoor to the employees who are not physically fit as coal cutter; but the workman has not been able to prove his contention by adducing documentary evidence such as medical certificate regarding his ailment, the Scheme of the Coal India Ltd. regarding provision of alternative job of general mazdoor to such employees who are not physically fit to work as coal cutter. The workman himself admitted that having declared medically fit, he joined the job on the basis of the appointment/acceptance letter marked as Exhibit-1 and the joining letter (Exhibit-2). The workman although mentioned that he has informed the Management about his sickness and applied for change of his duty but no document has been produced in support of his contention.



He also said that due to his sickness he could not attend his duty which he informed his Management submitting sick certificate while in his cross-examination he said that he has no document to show that he ever applied for leave. The Management witness No. 1, on the other hand, categorically mentioned that the workman was engaged in place of his mother who had taken VRS under Special Female Voluntary Retirement Scheme, and the workman was allowed to join his duty after receiving his letter of acceptance to work as piece rated work in underground mine. But the workman was habitually absentee who remained absent on various occasions for which caution letters/warning letters were issued on different occasions and even the workman was punished for his absence. He categorically mentioned that there is no such scheme in their establishment that initially a worker can not be engaged as piece rated coal cutter, while there is a decision of CMD meeting of Coal India Ltd. that the son under the Female Voluntary Retirement Scheme is only appointed as piece rated worker. He also said that the workman did not submit any representation with prayer for conversion of his duty from piece rated worker to daily rated worker for light duty. The Management in order to establish their stand has proved the caution letters dated 16.2.1999, award of punishment dated 17.6.1999, the Office Order dated 21.10.1999 regarding suspension of 10 working days. The Award of punishment of suspension against the workman for 10 working days without wages dated 2.6.2000, the caution letter issued by the Management on 15.5.2002 due to the absent of the workman from duty, the award of punishment dated 11.9.2003 stopping the increment without cumulative effect for five years, marked as Exhibit-A (in 6 pages). The Management has also proved the extract from the Attendance Register in respect of the workman which was prepared on the basis of the Loose Leaf Sheets *vide* Exhibit-B series containing 4 pages. On perusal of the document marked as Exhibit-B series, it appears that the workman was present in duty for 85 days in 1998 and 18 days in 1999; 71 days in 2000; 40 days in 2001; 46 days in 2002; 44 days in 2003 and in 2004 the workman was found absent although the Management witness No. 1 admitted that there is some minor discrepancy in respect of the Attendance Register pertaining to the Attendance Register of 2003 between the Loose Leaf Sheets (Exhibit-B series) and the report submitted by the concerned time keeper marked as Exhibit-H series, (page-6) but this discrepancy is found ignorable as it will not affect the merit of the proceeding. From the caution letter/Award of punishment/Office Order proved in Exhibit-A series, it appears that the workman was absent with effect from 16.1.1999 till 15.2.1999 without the permission of the competent authority or without showing sufficient reason (*vide* Exhibit-A series, page-1); the warning letter dated 17.6.1999 issued by the Management finding the workman guilty of charges in the Departmental Proceeding held on 9.6.1999 (page 2 of Exhibit-A series), the Office Order imposing punishment of

suspension of 10 working days under Clause 27.1(C) of the Standing Order with effect from 22.10.1999 to 02.11.1999 (Page-3 of Exhibit-A series), the Award of punishment of suspension for 10 working days without wages with effect from 2.6.2000 to 13.6.2000 under Clause 27.1(C) of the Standing Order against the workman issued on 2.6.2000 (*vide* page 4 of Exhibit-A series); the caution letter issued by the Management on 15.5.2002 finding the workman absent from duty from 27.8.2001 (*vide* page-5 of Exhibit-A series); and the Award of punishment dated 11.9.2003 passed by the Management under Clause 27.1(D) of the Standing Order imposing punishment of stoppage of annual increment without cumulative effect for 5 years against the workman (*vide* page-6 of Exhibit-A series). The workman although denied that he never received any caution letter/warning letter or any order of punishment marked as Exhibit-A series which are official documents duly proved by the Management and the workman has not been able to twist or shake the testimony of the Management witness No. 1 in respect of the documents marked as Exhibit-A series and hence, these documents can not be rejected. Nor the workman in order to disprove this contention of the Management has taken another step for production of the original record in connection with the documents marked as Exhibit-A series. Although the workman stated that he was absent from duty on different occasion with intimation to the Management along with the medical report, in his cross-examination, he clearly admitted that he informed the Management verbally about his illness and also submitted sickness certificate but he never applied for leave in writing. The workman also failed to produce any document/medical certificate to show that he remained absent with intimation to the Management. Thus the workman himself contradicted his own statement which hampers the credibility of the testimony of the workman.

The workman mentioned that the Management issued the alleged charge sheet dated 3.2.2004 against him on the charge of his misconduct and continuous and habitual absence from duty without any sanctioned leave or sufficient cause from 10.11.2003 but the same was not served upon him at any point of time; and he was not given any opportunity to submit his reply to the charge sheet nor the findings of the enquiry proceeding was furnished to him so that he could represent himself against the said findings of the enquiry proceeding. He alleged that he was illegally terminated from service on the basis of the findings of ex-parte enquiry which was done arbitrarily and in gross violation of natural justice. He also added that he was deprived of due opportunity to present his case before the Enquiry Officer and being heard on the point of his imposition of punishment.

8. On perusal of the documents marked as Exhibits-C, D and E, it appears that the charge sheet was forwarded to the workman framing charge of absence from the duty

by the workman since the year 2002 to 2004. The notices of enquiry issued by the Enquiry Officer, Sri B. Borthakur dated 28.4.2004 and 4.5.2004 were issued against the workman by Registered Post with A/D *vide* Exhibit-F which were returned with report of the Postman with remarks "not found", "not known, addressee not known" and the notices were tried to be served on different dates shown as 13.5.2004, 14.5.2004, 15.5.2004, 17.5.2004. Thereafter the notice dated 3.2.2004 along with the charge sheet framed against the workman was issued by publication in the local daily Newspaper namely 'Janmabhum' on 2.7.2004, *vide* Exhibit-G. Yet the workman did not appear before the Enquiry Authority. The workman took the plea that he did not receive any notice nor any charge sheet from the Management, nor did he read the Newspaper as he is a lay man. In his cross-examination the workman stated that his house is situated at a distance of 8 K.M. from the place of his work and  $2\frac{1}{2}$  K.M. from the Head Office and his place cover under the Post Office which is adjacent to the Head Office; and he did not know whether any departmental proceeding was initiated against him nor any paper publication was done by the Management in this regard, but the discharge letter was received by his brother through Post Office which was received by him after 10/12 days since he was out of station. The workman witness No. 2, Sri Swapan Roy in his cross-examination categorically mentioned that his residence is about 11 K.M. far away from that of the workman and he knew that in the year 2004 the concerned workman was charge sheeted by the Management. It is also admitted by the workman witness No. 2 that the workman used to remain absent from duty from time to time since 2002 to 2004; and in the year 2002 the concerned workman was charge sheeted by the Management and as per the Standing Order if an employee intentionally remains absent from duty in comes within the ambit of misconduct. The Management witness No. 1 also said that the workman was staying in Masjid Colony near Marghareta town and the Newspapers are easily available in the said locality for which the workman could have easily obtained the said vernacular Newspaper namely 'Dainik Janambhumi' dated 2.7.2004 as the workman studied upto Class-IX.

The provision of CPC regarding substituted services as provided in Order V Rule 20 which runs as under:—

"20. Substituted service—(1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

(1-A) Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain."

From the pleading of the Management as well as the testimony of the Management witness No. 1 along with the documents proved by the Management, it appears that the Management due to unauthorized absence of the workman framed charge sheet which was forwarded to the workman but the same could not be served and thereafter the enquiry was initiated by the Management upon which a notice along with the charge sheet against the workman was published by the Management in the daily vernacular Newspaper namely Janambhumi and as the evidence shows that the workman has been residing in the Masjid Colony which is  $2\frac{1}{2}$  K.M. from his Head Office within the jurisdiction of same Post Office. Thus it is clear that the Management, on failure to cause service of notice upon the workman directly, followed the recourse of substitute service as per Provision of Rule 20(1-A) Order V of CPC. In such a situation, I find no reason to discard the plea of the Management as the efforts taken by the Management as mentioned above is not sufficient enough to hold the notice and the charge sheet deemed to have been served upon the workman.

9. In course of argument Mr. K.M. Haloi, learned Advocate for the workman submitted that the workman was not notified as to the initiation of the enquiry proceeding nor the workman was given any opportunity to represent himself as well as to be heard; and even the workman was deprived of exercising his fundamental right as enshrined in Constitution of India (Article 309 and 311). He also emphasized that the workman was an innocent and he would contest the departmental proceeding if notified to him. Mr. Haloi contended that the Management in order to deprive the workman from his job and with malafide intention initiated the enquiry proceeding keeping the workman in darkness and accordingly made this ex-parte enquiry violating the principle of natural justice as well as the provision of Constitution by discharging the workman illegally exercising the hire and fire policy, and such action of the Management is liable to be set aside.

In support of his argument Mr. Haloi relief decisions laid down in the following cases of Hon'ble Supreme Court.

(a) In *C.L. Subramaniam-vrs-The Collector of Customs*, reported in AIR 1972 Supreme Court 2178, wherein it was held in Para-5 as—"The appellant who was a member of the Civil service of the Union of India was holding his office during the pleasure of the President; but in view of Article 311 of the Constitution, he could not have been removed from service except after enquiry in which he had been given a reasonable opportunity of being heard in

respect of the charge levelled against him. This procedural guarantee is undoubtedly a valuable one. Breach of that guarantee vitiates the enquiry."

(b) In *Managing Director, ECIL, Hyderabad and others-vs-B. Karunakar and Others* reported (1993) 4 Supreme Court Cases 727 and in *Union of India and Others-vrs-Md. Ramjan Khan*, it was held that Right to show cause against penalty proposed which has been taken away by the 42nd Amendment pertains to the second stage of the inquiry when disciplinary authority takes decision on the question of penalty imposable on the delinquent, denial of right to copy of the enquiry report amounts to denial of reasonable opportunity and violation of Articles 14 and 21 and principles of natural justice; Where punishment imposable is other than the major punishment of dismissal, removal and reduction in rank and the rules contemplate inquiry and the enquiry officer is not the disciplinary authority, then also enquiry report is to be supplied; and non furnishing the copy of report of Enquiry Officer to the delinquent employee would be violative of principles of natural justice rendering the final order invalid against the delinquent void.

10. Mr. M.Z. Ahmed, learned Sr. Advocate for the Management, on the other hand, objecting to the submission of the workman side raised his argument stating that the workman was appointed in place of his mother on the ground of the Voluntary Retirement Scheme taken by his mother under Special Female Voluntary Retirement Scheme and he was allowed to join his duty on receipt of the letter of acceptance to work as piece rated worker in underground mine and under the said Special Female Voluntary Retirement Scheme the job offered to the workman is restricted only to the underground piece rated miner and loader and nothing else. He also added that as per direction of the Management, the Chairman of Coal India Ltd. only has the power to entrust a mazdoor from piece rated worker to a time rated worker in the event of finding the said piece rated worker unfit for performing the job on the basis of Medical Certificate issued by the Medical Officer of the Company but the workman has failed to produce any representation with the prayer for converting his duty from piece rated works to daily rated work or for light duty, rather the workman was found a habitual absentee and in spite of issuing caution letter/warning letter and even imposing punishment for his absent the workman did not improve his attendance. Thereafter the Management finding no alternative initiated an enquiry and framed the charge againsts the workman for violation of Clause 26.30 and Clause-26.24 of the Standing Order as discussed above, and the notice along with the charge sheet was issued against the workman but could not be served due to not finding the workman at his given address as well as avoidance of the workman as it appears from his previous conduct and from the endorsement made by the Postman on the body of envelop containing the notice.

Thereafter the notice was served upon the workman as per the procedure laid down under Order V Rule 20 of the CPC. But the workman did not take part in the enquiry proceeding, who appears to had been residing about 2 KM away from the Head Quarter to the Management, hence, Mr. Ahmed contended that since the Management has made all efforts to cause service of notice of enquiry as well as to supply the charge framed against him exhausting all the procedure there is no further necessity to furnish the copy of enquiry report along with document regarding proposed punishment against the workman by the Enquiry Authority since it will be a meaningless as well as futile Act. As such, the Management has committed no illegality for violated the principle of natural justice in holding the enquiry against the workman. Mr. Ahmed also mentioned that the workman was absenting from his duty deliberately without any intimation although he has taken the plea that due to medical ground he could not attend his duty but there is no iota of evidence on record to show that such explanation of the workman is found established hence, the workman is not entitled to any relief as claimed. In support of his contention he relied upon the decision of the Hon'ble Supreme Court in *Bank of India - vrs - T.S. Kelawala and others, S.U. Motors Private Ltd.-vrs-Workmen* published in (1990) 4 Supreme Court Cases 744 that deliberate abstention from work, whether by resort to strike or go slow or any other method, legitimate, resulting in no work for the whole day or days or part of the day or days, will entitle the management to deduct, pro rata or otherwise, wages of the participating workmen notwithstanding absence of any stipulation in the contract of employment or any provision in the service rules, regulations or Standing Orders.

Mr. Ahmed further argued that the workman being a daily rated/piece rated worker appointed on a compassionate ground in the event of the Voluntary Retirement Scheme taken by his mother, committed gross misconduct and due to such behaviour of the workman the order of discharge passed by the Management after holding enquiry is in no way illegal and the workman has also no right to the post. Mr. Ahmed relied upon the decision in *Reserve Bank of India - vrs- Gopinath Sharma* and another wherein it was laid down that the workman not appointed to any regular post but engaged on the basis of need of work on day to day basis held, acquired no right to the post.

The Management side also submitted that the enquiry against the workman was held as per procedure and the charges framed against the workman was found well established, but due to failure of the Enquiry Officer to supply the enquiry proceeding and the punishment proposed by the Management against the workman finding no where about the workman will not vitiate the entire enquiry proceeding as well as its finding. Learned Advocate for the Management also submitted that if the Tribunal



finds that the instant reference case would be Prejudice because of non supply of the report the Tribunal may set aside the order of punishment and issue direction for fresh enquiry from the stage of supply of the report. In this connection Mr. Ahmed, the learned counsel for the Management, cited the decision of Hon'ble Supreme Court in NTC (WBAB&O) Ltd. and another—vrs— Anjan K. Saha published in (2004) 7 Supreme Court Cases 581 which runs as follows:—

"The language of clause 14(4)(c) of the Model Standing Orders is not mandatory. In any case, non-compliance therewith cannot be held to be a more vitiating factor than non-supply of enquiry report. If the Constitution Bench of the Supreme Court in cases of non-supply of enquiry report directs the procedure to be adopted by allowing the employer to restart the enquiry from the stage of supply of enquiry report without reinstating the employee, why such a course should not be directed to be adopted where the other grievance of the employee is denial of opportunity to show cause against proposed penalty? When the court can direct a fresh enquiry from the stage of supply of enquiry report the next step in the enquiry of giving opportunity against the proposed penalty can also be directed to be taken. After the fresh enquiry is over from the stage of supply of enquiry report, the employee can be granted opportunity against proposed penalty in terms of clause 14(4)(c) of the Model Standing Orders. Consequential order, if any passed, shall abide the final result of the proceedings. As held in the case of B. Karunakar, (1993) 4 SCC 727 if the employee is cleared of the charges and is reinstated, the disciplinary authority would be at liberty to decide according to law how it will treat the period from the date of dismissal till the period of reinstatement and the consequential benefits."

"Mr. K.M. Haloi, learned Advocate for the workman vehemently objecting to the submission of the learned Advocate for the Management citing the case of State Bank of Bikaner and Jaipur—vrs— Om Prakash Sharma reported in (2006) 5 SCC 123 that this Tribunal/Labour Court can not go beyond the terms of reference and an award passed by the Labour Court in excess of his jurisdiction, held, his capability of correction by the High Court in exercise of his power judicial review. He also relied upon the decision laid down in Mahendra L. Jain and Ors.—vrs—Indore Development Authority and Ors. reported in (2005) 1 SCC 639 (Head Note D). Labour law-Industrial Disputes Act, 1947—Ss 10 and 11—Jurisdiction of the Labour Court—Held, Labour Court cannot enlarge the scope of reference nor can deviate therefrom—A demand not raised at the time of raising dispute, cannot be adjudicated by it—Further held, no relief can be granted against a separate

juristic entity which was not a party to the proceedings — M.P. Industrial Employment (Standing Orders) Act, 1961 (26 of 1961)—M.P. Industrial Employment (Standing Orders) Rules, 1963.

In the present reference the Management appears to have exhausted all the procedure for causing service of notice along with the charge sheet upon the workman and the enquiry was held ex-parte. In this proceeding also the workman has not been able to establish his contention that he was absent from duty with authority nor could he support his contenting by adducing any documentary evidence. Therefore, it is clear that the Management has been able to prove the charge of habitual absent from duty without sufficient cause and absent from duty without sanctioned leave or sufficient cause or over staying beyond sanctioned leave as framed by the Management under Clause 26.24 and Clause 26.30 of the Standing Order. On scrutiny of the proceeding of the departmental enquiry and the findings of the Enquiry Officer marked as Exhibit-H together with my discussion as above, I find the charges was established against the workman; and in the event of passing the award setting aside the punishment only because of the procedural irregularity i.e. the non-supply of proceeding of the enquiry along with its findings and the punishment imposed upon the workman, it will cause much prejudice to this proceeding as such, I find no reason to discard the submission of Mr. M.Z. Ahmed, learned Advocate for the Management as to passing an Award allowing the employer to start the enquiry from the stage of supply of enquiry report without reinstating the employee since the workman has already been discharged.

11. In view of my above discussion and the findings as well as the ratio of the decisions of the Hon'ble Supreme Court held in the cases as aforesaid, I find it a fit case to follow the decision of the Hon'ble Supreme Court in NTC (WBAB&O) Ltd. and another—vrs—Anjan K. Saha reported in (2004) 7 SCC 581. Further there is also no chance of infringement of jurisdiction of this Tribunal nor any violation of the terms of reference.

Accordingly this reference is disposed of directing the Management a fresh enquiry from the stage of supply of enquiry report to the next step in the enquiry giving opportunity against the proposed penalty is also be directed; and after the fresh enquiry is over from the stage of the supply of the enquiry report the workman be granted opportunity against the proposed penalty as per provision of Model Standing Order. The Disciplinary Authority would be at liberty to decide according to law how it will treat the period from the date of dismissal in the event of passing any order of reinstatement or consequential benefits. The management is further directed to dispose of the inquiry proceedings as directed above, within three months from the date of notification of the award.



The workman is also directed to co-operate with the Management in disposing the inquiry proceeding.

Send the Award to the Government as per procedure. Given under my hand and seal of this Court on this 30th day of October, 2013 at Guwahati.

L. C. DEY, Presiding Officer

नई दिल्ली, 18 नवम्बर, 2013

**का०आ० 2604.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 21/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/11/2013 को प्राप्त हुआ था।

[सं० एल-22012/4/2011-आई आर (सी एम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 18th November, 2013

**S.O. 2604.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 21/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Limited, and their workmen, received by the Central Government on 18/11/2013.

[No. L-22012/4/2011-IR(CM-II)]

B.M. PATNAIK, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

**Present :** Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 21st day of August, 2013

**INDUSTRIAL DISPUTE No. I.D. 21/2011**

#### Between :

The General Secretary,  
(Sri Bandari Satyanarayana)  
Singareni TNTUC,  
H.No. 18-3-90/3, Ganesh Nagar  
Markandeya Colony,  
Godavarikhani-505209.

....Petitioner

AND

The General Secretary,  
M/s. Singareni Collieries Company Limited,  
Mandamarri Division,  
Mandamarri-504303.

....Respondent

#### Appearances:

For the Petitioner: NIL

For the Respondent: NIL

#### AWARD

The Government of India, Ministry of Labour by its order No. L-22012/4/2011-IR(CM-II) dated 19.4.2011 referred the following dispute between the management of M/s. Singareni Collieries Company Ltd., and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

#### SCHEDULE

Whether the action the management of General Manager of M/s. Singareni Collieries Company Ltd., Mandamarri Division, Adilabad District in dismissing the services of Sri Kummari Mondri, Ex-Coal Filler, KK-5A INC. of Mandamarri Division w.e.f. 13.1.2007 is justified? To what relief the dismissed worker is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 21/2011 and notices were issued to the parties.

2. The case stands posted for appearance of Petitioner union and for filing of claim statement and documents. Petitioner union called absent and there is no representation. Claim statement not filed since 2011 in spite of giving fair opportunity. In the circumstances, taking that Petitioner union is not interested in the proceedings, petition is dismissed.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 21st day of August, 2013.

M. VIJAYALAKSHMI, Presiding Officer

#### Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
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NIL

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 18 नवम्बर, 2013

**का०आ० 2605.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम

न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 19/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/11/2013 को प्राप्त हुआ था।

[सं० एल-22012/203/2012-आई आर (सी एम-II)]  
बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 18th November, 2013

**S.O. 2605.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 19/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 18/11/2013.

[No. L-22012/203/2012-IR (CM-II)]  
B. M. PATNAIK, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

**Present :** Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 24th day of September, 2013

#### INDUSTRIAL DISPUTE No. I.D. 19/2013

#### Between :

The President,  
(Sri Bhandari Satyanarayana)  
Telangana Trade Union Council,  
H.No. 5-295, Indira Nagar,  
Opp. Bus Stand, Mancherial,  
Adilabad Distt.-504208. ....Petitioner

AND

The General Manager,  
M/s. Singareni Collieries Company Limited,  
Sreerampur Area, Sreerampur,  
Adilabad district-504303. ....Respondent

#### Appearances:

For the Petitioner : NIL

For the Respondent : M/s P.A.V.V.S. Sarma & Vijaya  
Lakshmi Panguluri, Advocates

#### AWARD

The Government of India, Ministry of Labour by its order No.L-22012/203/2012-IR(CM-II) dated 30.11.2012 referred the following dispute between the management of M/s. Singareni Collieries Company Ltd., and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

#### SCHEDULE

"Whether the action the management of General Manager of M/s. Singareni Collieries Company Ltd., Sreerampur Area, Sreerampur, Adilabad District in terminating the services of Sri Ande Ramulu, Ex-Coal Filler, RK-5 Inc., SCCL Sreerampur Area, with effect from 1.2.2005 is justified or not? To what relief the applicant is entitled for?"

The reference is numbered in this Tribunal as I.D. No. 19/2013 and notices were issued to the parties.

2. The case stand posted for appearance of Petitioner union and for filing of claim statement and documents.

3. Petitioner union called absent and there is no representation. Claim statement not filed inspite of giving fair opportunity. In the circumstances taking that Petitioner union is not interested in the proceedings, petition is dismissed.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 24th day of September, 2013.

M. VIJAYALAKSHMI, Presiding Officer

#### Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
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NIL

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 18 नवम्बर, 2013

**का०आ० 2606.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, गोदावरीखन्नी के पंचाट (संदर्भ संख्या 54/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/11/2013 को प्राप्त हुआ था

[सं० एल-22013/1/2013-आई आर (सी-II)]  
बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 18th November, 2013

**S.O. 2606.**—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Indus. Tribunal-cum-Labour Court, Godavarikhani (IT/ID/54/2010)

as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 18.11.2013.

[No. L-22013/1/2013-IR(C-II)]  
B.M. PATNAIK, Desk Officer

#### ANNEXURE

#### BEFORE THE CHAIRMAN INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-CUM-VI ADDL. DISTRICT & SESSIONS COURT, GODAVARIKHANI

**Present :** Sri G. V. Krishnaiah,  
Chairman-cum-Presiding Officer.

**INDUSTRIAL DISPUTE No. 54 OF 2010**  
Saturday, the 19th day of October, 2013.

#### Between :

Gujjula Swamy, S/o. Buchaiah, Age 32 years,  
Occ: Coal Filler, R/o. Kila Vanaparathi, Mandal,  
Dharmaram, District: Karimnagar ---Petitioner.

And

- (1) The General Manager,  
S.C. Co. Ltd., Ramagundam-I,  
Post: Godavarikhani, Dist. Karimnagar.
- (2) The Managing Director (Administration),  
S.C. Co. Ltd., P.O., Kothagudem,  
District Khammam (A.P.) ---Respondents.

This case coming before me for final hearing in the presence of Sri S.Bhagavantha Rao, Advocate for the petitioners and of Sri D. Krishna Murthy, Advocate for the Respondents; and having been heard and having stood over for consideration till this day, the Court delivered the following:-

#### AWARD

This petition is filed U/Sec. 2-A(2) of the Industrial Disputes Act, 1947 praying this court to direct the respondents to reinstate the petitioner into service with continuity of service and other attendant benefits by setting aside dismissal order vide Proc. No. PRG.1/32/98, dt. 26-3-1998 on the file of 1st respondent with full back wages.

2. The averments of the petition are that the petitioner was appointed as an employee in respondent company 14-10-1991 and the petitioner discharged his duties to the fullest satisfaction of superiors till removal from service and his services are governed by various standing orders of SC company.

3. The petitioner got employment in place of his father who was declared medical unfit by company and he got a job under "Department quota" as per settlements. The

petitioner was initially appointed as Badli Filler and subsequently confirmed service. The petitioner fell ill during the year 1998 and a charge of absenteeism U/Sec.25:25 of standing orders is foisted against the petitioner and terminated from service and the petitioner was put in seven years of service in the company.

4. The respondent company also reviewed the cases of absenteeism by High power committee and the petitioner received a call letter from High power committee Kothagudem. But the petitioner's case was not considered by the High power committee. The father of the petitioner lost two eyes while working in the company. He was made unfit and so respondent provided employment to the petitioner. But petitioner was removed from service which is illegal and against the principles of natural justice. Therefore he prays to set aside the dismissal order dt.26-3-1998 and to reinstate him into service with full back wages.

5. The respondent No. 1 filed his counter denying all the allegations in the petition putting the petitioner to strict proof of all those allegations. The 2nd respondent filed memo adopting the counter filed by R-1.

6. The brief averments of counter of R-1 are that the respondents' company is a Government Company incorporated under the provisions of Company's Act, 1956 for carrying out the business of mining and selling the coal and since the coal mining industry is a central subject, the appropriate Government for this respondent/management is Central Government. As per Sec. 7 (A) (1) of I.D., Act, the appropriate Government may by notification in the official gazette constitutes one or more Industrial Tribunals for the adjudication of Industrial Disputes relating to any matter whether specified in the 2nd or 3rd schedule and for performing such other functions as may be assigned to them under this Act. And that the Central Government established an Industrial Tribunal-cum-Labour Court at Hyderabad from 29-12-2000 for adjudication of Industrial Disputes and the petitioner ought to have approached the said Tribunal for the redressal of grievances if any. But he conveniently avoided to file his petition before the Tribunal established by the Central Government for the reasons best known to him and the petition is not maintainable under law and the same may be dismissed on this ground alone. The present dispute is barred by limitation as per Sec. 2-A of the Industrial Disputes Amendment Act, 2010 which came into force *w.e.f.* 15.9.2010. The petitioner was dismissed from service in the year 1998, he kept quiet for 12 years and raised this dispute, which is barred by limitation. Therefore, the I.D., is liable to be dismissed in limini.

7. The petitioner was appointed as Badli Filler on 14.10.1991 on companionship grounds. The petitioner is a chronic absentee. The following attendance particulars indicate that he was not regular to his duties and in no year he had put in 190 musters during the years 1995 to 1998.

Sl. No.	Year	No. of musters
1.	1995	21
2.	1996	38
3.	1997	95
4.	1998	20

During the period from January, 1996 to December, 1996 the petitioner has put in only 38 musters. As the above act amounted to misconduct under Companies Standing Orders Clause No. 25.25 he was charge sheeted *vide* charge sheet No. GDK1/6-g/97/1702, dt. 18.07.1997. The relevant clause of standing orders reads as under:—

"Clause 25.25-Habitual late attendance or habitual absence from duty without sufficient cause".

8. The petitioner received and acknowledged the charge sheet, but failed to submit any explanation. He fully participated in the enquiry proceedings. The enquiry was conducted duly following the principles of natural justice. The enquiry officer submitted his findings holding the petitioner guilty of the misconduct under the company's standing orders. He was issued show cause notice dt. 19.1.1998 to make his representation if any against the findings of the enquiry. Having received the said notice, he submitted explanation dt. 2.2.1998. Finding his explanation not satisfactory and considering the enquiry report, the respondents' company dismissed the petitioner from service *vide* office order dt. 26.3.1998 *w.e.f.* 31.3.1998. The respondents' company reviewed absenteeism cases by high-power committee at Kothagudem, the petitioner was also called for interview, but his case was not considered for reappointment by the high-power committee, due to poor past performance. Therefore, the respondents pray to dismiss the petition with costs.

9. Ex. W-1 to Ex. W-4 are marked on behalf of the petitioner and no documents are marked on behalf of the respondents.

10. Heard both sides. Perused the material papers on record.

11. Both sides have also filed written arguments.

12. Now the points for consideration are:—

- (1) Whether the present petition is maintainable before this Tribunal?
- (2) To what extent the alleged misconduct on the part of the petitioner was made out in the domestic enquiry and whether the punishment of dismissal of the petitioner is justified?"

13. In this case, the counsel for the petitioner filed Memo stating that the petitioner is not disputing the validity of domestic enquiry and prayed this court to decide the

gravity of punishment and mould the relief, U/Sec. 11-A of ID Act, on 28.11.2011, which was recorded. Therefore there is no necessity to decide the validity of domestic enquiry conducted by the respondents.

14. POINT No. 1:—It is the case of the respondents that the respondents company incorporated under the provisions of Company's Act 1956 for carrying out the business and selling the coal and since the coal mining industry is a Central subject, the appropriate Government for this respondents/management is Central Government and that as per Sec. 7A(1) of I.D. Act, the appropriate Government by may its notification the official gazette constitute one or more industrial tribunals for adjudication of industrial disputes relating to any matter whether specified in the 2nd or 3rd schedule and for performing such other functions as may be assigned to them under this Act. The respondents further submitted in their counter the Central Government established an industrial Tribunal-cum-Labour Court at Hyderabad on 29.12.2000 for adjudication of Industrial disputes and the petitioner ought to have approached the said tribunal for redressal of grievances if any. As such, the ID is liable to be dismissed in limini.

15. In a case reported in 1998(5) ALD-16 (D.B) in a writ petition between U. Chinnappa Vrs. Cotton Corporation of India and others; the Division Bench of our High Court held—"we will assume that in so far as the dismissed or retrenched workman is able to approach the Labour Court straight-away, the power of the Central Government to make a reference of the dispute may be whittled down protanto and in that sense there is a conflict or repugnancy with sub-section (2) of section 2(A) and Section 10(1) r/w sub-section (1) of section 2-A and Section 3 of the Act. Even then, the Presidential assent given under Article 254(2) makes the State law prevail over the provisions of the Central law to the extent of repugnancy". It also further observed Industrial Disputes Act, 1947, Section 2-A(2) is not confined to workmen employed in Industrial undertakings of State Government and it applies also to workmen engaged in Central Government undertakings.

16. In the light of the above cited case law, Section 2-A(2) of I.D. Act, 1947 applies both to the workmen employed in State Government undertakings and Central Government undertakings. It is for the workman to approach U/Sec. 2-A(2) of I.D. Act, either to the Industrial Tribunals having Central jurisdiction and also the Tribunals having State jurisdiction. The petitioner was dismissed from service by order dt. 13.2.2003 *i.e.*, much prior to the Amendment Act, 2010 came into force. This amendment has no retrospective effect. The petitioner's case is not covered by the Amendment Act, as such the I.D., is maintainable before this court.

17. In view of the above, I hold that this Tribunal is having jurisdiction to decide the industrial dispute on hand



and the petition filed by the petitioner is maintainable. The point is answered accordingly.

18. The petitioner has conceded the validity of domestic enquiry conducted by the respondents. During the period from January 1996 to December 1996, the petitioner had put in only 38 musters. The petitioner admitted his attendance particulars, furnished hereunder:—

Year	No. of musters
1995	21
1996	38 Charge sheet year
1997	95
1998	20 upto removal

The petitioner contended that he fell ill during the year 1996, due to which he could not attend to his duties. He has not filed any piece of document to substantiate his ill-health.

The above attendance particulars admitted by the petitioner shows that he was in the habit of absenting from duties frequently. But to consider the punishment awarded to the petitioner whether it is proportionate to the charges proved against the petitioner or not, has to be considered.

19. The learned counsel for the petitioner contended that the major punishment of dismissal from service imposed on the petitioner is shockingly disproportionate. The absence of the petitioner was due to the ill-health of the petitioner only, but not otherwise. As such, the respondents ought not have dismissed the petitioner from service. Hence the major punishment of dismissal be modified to stoppage of two increments with cumulative effect. In support of his contention, the learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court reported in 2009-III-LLJ-373 S.C. between Jagis Singh and Punjab Engineering College.

20. In this case, the petitioner had put in less musters during the years 1995 to 1998. Charge sheet was issued with reference to the absenteeism for the year 1996. Thus, prior to charge sheeted and subsequent years also, the petitioner had put in less musters. Admittedly the petitioner was appointed on compassionate grounds, during the year 1991. The petitioner can be given one more chance to mend himself. In these circumstances, I am of the considered opinion, that dismissal of the petitioner from service is not proportionate to the charge proved against him. Therefore, I hold that dismissal of the petitioner from service is not justified.

21. In the light of above foregoing discussion, I hold that the charge framed against the petitioner is proved and

the punishment of dismissing the petitioner from service is not justified and not proportionate to the charge proved against him. Therefore, I hold that the punishment of dismissal needs modification to that of reinstatement as Badli Filler "afresh", to meet the ends of justice. The point is answered accordingly.

22. In the result, the order of dismissal dt. 26.03.1998 is set aside and the respondents are directed to reinstate the petitioner into service as a "Fresh Badli Filler". The petitioner is not entitled to any back wages or continuity of service.

Typed to my dictation, corrected and pronounced by me in open Court, on this the 19th day of October, 2013.

G. V. KRISHNAIAH, Chairman-cum-Presiding Officer

### Appendix of Evidence

#### Witnesses Examined

For workman:—

-Nil-

For Management:—

-Nil-

#### EXHIBITS

For workman:—

Ex. W-1	Dt. 27.05.1997	Letter issued to the Colliery Manager, GDK.1 Incline by the Medical Supdt., Area Hospital RG, x.copy.
Ex.W-2	Dt. 12.04.1998	Mercy appeal, x. copy
Ex.W-3	Dt. 26.03.1998	Dismissal order, x.copy
Ex.W-4	Dt. 22.07.2003	Representation of petitioner submitted to the Hon'ble Minister, Mines Govt. of AP., Hyderabad, o/c.

For Management:—

-Nil-

नई दिल्ली, 18 नवम्बर, 2013

**कांआ 2607.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स ई यू एम पी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (संदर्भ संख्या 02/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/11/2013 को प्राप्त हुआ था।

[सं एल-42012/28/2001-आईआर (सी एम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 18th November, 2013

**S.O. 2607.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 02/2002 of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Institute of Unani Medicine Plants, and their workmen, received by the Central Government on 18/11/2013.

[No. L-42012/28/2001-IR (CM-II)]  
B. M. PATNAIK, Desk Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, LUCKNOW

**Present :** DR. MANJU NIGAM, Presiding Officer

**I.D. No. 02/2002**

Ref. No. L-42012/28/2001-IR(CM-II) dated: 24.12.2001

#### BETWEEN

Shri Sukh Lal C/o Sh. B.P. Singh  
E-165, Sector "G", L.D.A. Colony  
Kanpur Road  
Lucknow (U.P.)

#### AND

The Project Coordinator  
Institute of Unani Medicine Plants  
Kurshi Road, Sec. 'C', Jankipuram  
Lucknow.

#### AWARD

1. By order No. L-42012/28/2001-IR(CM-II) dated: 24.12.2001 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Sukh Ram, C/o Sh. B.P. Singh, E-165, Sector "G", L.D.A. Colony, Kanpur Road, Lucknow and the Project Coordinator, Institute of Unani Medicine Plants, Kurshi Road, Sec. 'C', Jankipuram, Lucknow to CGIT-cum-labour Court, Lucknow for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF UNANI MEDICINAL PLANTS IN TERMINATING THE SERVICES OF SHRI SUKH LAL S/O SH. MOTILAL ON 13.07.1999 IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE WORKMAN IS ENTITLED TO?"

3. The case of the workman, Shri Ram, in brief, is that he was employed with the opposite party *w.e.f.* 01.01.1998 as a labour on daily wages @ Rs. 42.50 per day; and he worked accordingly, continuously up to 13.07.1999, including Sundays and holidays. He has alleged that his services have been terminated *w.e.f.* 13.07.1999 without any rhyme or reason, notice or notice pay in lieu thereof, in violation to the provisions contained in the Industrial Disputes Act, 1947. Hence, the workman has prayed to set aside his termination and reinstate him with consequential benefits including full back wages.

4. The management of the Unani Medicine has disputed the claim of the workman by filing its written statement; wherein it has stated that the workman was not employed by it; rather he was engaged on daily/temporary basis. The opposite party has pleaded that the applicant is not the workman; moreover it is not an 'industry' within the provisions of Act as its main object is to carryout research work and is not indulge in any trade, business. It has been submitted that the labours are engaged as per need of the work and the applicant has worked with it *w.e.f.* 16.10.98 to 11.07.99 with several breaks only for 96 days and never remained in continuous work. It has further submitted that the alleged disengagement was automatic and in terms of standing orders; accordingly.

5. The workman has filed its rejoinder wherein apart from the averments already made in the statement of claim he has submitted that the opposite party has admitted of having workman worked with it therefore, he is a workman as defined under section 2 (s) of the Industrial Disputes Act, 1947. Further, it has denied the contentions of the opposite party that the establishment of Unani Medicine is not an 'Industry' and has submitted that the same is covered under the terms of 'Industry' as defined under section 2 (j) of the Act.

6. The parties have filed documentary evidence in support of their respective stand. The workman examined himself whereas the management has though filed affidavits of Miss Rafat Mahmooda, Dy. Director in Charge and of Dr. Idris Ahemad, Technical Advisor in support of their case; but produced none for their cross-examination.

7. Having gone through entire evidence on record, it comes out that the case was referred to this tribunal in December, 2001 and after conclusion of pleadings on behalf of the parties the case was fixed for evidence on 25.11.2003; and the workman's evidence was recorded on 01.02.2006; however his cross-examination was done by the authorized representative of the management on 13.05.2009. Thereafter, 30.07.2009 was fixed for opposite party's evidence. After passage of so many dates the opposite party filed evidences of its two witnesses *viz.* Miss Rafat Mahmooda, Dy. Director In Charge and of Dr. Idris Ahemad, Technical Advisor on 16.12.2010 and next date 28.01.2011 was fixed for cross-examination of the management witnesses. Thereafter, the

case was fixed on 28.01.2011, 09.03.2011, 04.05.2011, 16.06.2011, 17.08.2011, 03.10.2011, 28.11.2011, 18.01.2012, 15.03.2012 and 03.05.2012; but the management did not produced the management witnesses for cross-examination; accordingly, keeping in view reluctance of the management to produce it witness for cross-examination for more than one & half year, the opportunity to get their witness cross-examined was closed vide order dated 03.05.2012 and case was fixed for 13.06.2012 for arguments. Since then the case was listed for argument on 13.06.2012, 07.08.2012, 03.10.2012, 02.11.2012, 20.12.2012, 04.02.2013, 27.02.2013, 08.04.2013, 04.06.2013, 16.08.2013 and 07.10.2012; but none turned up from the management to argue their case nor filed any adjournment. Thus due to non-appearance of management for long the workman's representative was heard and case was reserved for award keeping in view reluctance of the management and long pendency of the case, since 2002.

8. Heard representatives of the workman only and scanned entire evidence on record.

9. The authorized representative of the workman has contended that the opposite party is indulge in research activities, which is not sovereign function; aslo, the result of their research is being used by the Government and other agencies for drug manufacturing, therefore, the opposite party comes within the definition of 'Industry' as defined in the Section 2 'j' of the Act. He has further contended that the applicant is 'workman' as it is evident from the written statement of the management itself that he was engaged as labour for 96 days. The authorized representative has argued that the workman has well established through his oral testimony before this Tribunal that he has worked from 16.10.98 to 11.07.99 continuously and the same is reliable in view of non-submission of any evidence by the management or rebuttal of workman's evidence. It has also been submitted by the representative of the workman that the workman has worked continuously for more than 240 days on daily wages and his services were terminated *w.e.f.* 13.07.99; without any notice or compensation, in violation of the provisions contended in Section 25F of the I.D. Act.

10. I have given my thoughtful consideration to the contentions of the representatives of the workman and perused respective pleadings of the parties.

11. The workman in his statement on oath has stated that he worked from 16.10.98 to 11.07.99 continuously and he was paid @ Rs. 42.50 per day as labour. The workman has not filed any documentary evidence in support of his contentions that he actually worked for the duration he pleaded in the statement of claim. The management has though filed affidavits of its two witnesses; but has not turned up for their cross-examination; therefore, their evidence cannot be taken into account, which makes the evidence of the workman uncontroverted.

12. As regard pleading of the management that the applicant is not workman under provisions of the Act, it has not submitted any specific chart of duties of the applicant which goes to show that he is not workman. On the contrary, it is admitted that the applicant was engaged as labour for 102 days by the opposite party. This admission of the management itself clears the picture that the applicant is 'workman' within the criterion provided in Section 2 's' of the Act as per management's admission the applicant was engaged as 'labour' for some time. Therefore, it of the firm opinion that the applicant is 'workman' within the terms of the Act.

13. Further, the management has taken plea that it is not an 'Industry' as defined in Section 2 'j' of the Act. In this regard the workman has argued that the opposite party is industry as it qualifies the 'triple test' provided by Hon'ble Supreme Court in Bangalore Water Supply case.

The parties have relied on verdict of Hon'ble Apex Court in Bangalore Water Supply & Sewerage Board etc. vs. A Rajappa & others case; wherein it has been observed that

***"absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector."***

Hon'ble Apex Court has further observed that

"Where (i) systematic activity (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes not spiritual or religions but inclusive of material things or services geared to celestial bliss *i.e.* making on a large scale Prasad or food) *prima facie*, there is an industry in that enterprise."

It is clear that Institute of Unani Medicine Plants carries out research work by cultivating certain 'Herb plant'; the management has submitted that outcome of the such research is used through their hospitals and dispensaries free of cost and there is no trade activity or profit motive involved. In above cited case law Hon'ble Supreme Court is of the view that the "absence of profit motive or gainful objective is irrelevant" provided an establishment qualifies the triple test, it is an industry. In this case the result of research work is used by the hospitals and dispensaries for better prospect of human being; also, the work carried out by the Institute of Unani Medicine is not 'sovereign' in nature as same work is performed by other research laboratories etc. This indicates that the nature of work carried out by Institute of Unani Medicine qualifies the triple test, formulated by Hon'ble Apex Court in Bangalore Water Supply case. Thus, in view of facts and circumstances of the case and above legal prepositions, I am of considered opinion that Institute of Unani Medicine is an 'industry'

within the provisions of Section 2 (j) of the Industrial Disputes Act, 1947.

14. Now coming to the merit of the case, it is apparent on the face of record that the management did not rebutted the evidence of the workman in spite of ample opportunity was afforded to them since 28.01.2011; but it failed to do so, resulting into workman's evidence uncontroverted. He has also stated that he worked continuously from October, 1998 to November, 1999. The management has filed photo copy of working details from October, 1998 to July, 1999 which goes to show his continuous working in said months, and in the absence of any evidence from the management there is no reason to disbelief the statement of the workman that he worked continuously from 16.10.98 to 11.07.99. The management has neither pleaded nor there is any evidence on record that it complied with the provisions contained in Section 25 F of the I.D. Act, 1947 while disengaging the workman.

15. The terms of the reference says that this Tribunal has to adjudicate upon the validity of action of the management in terminating the services of the workman *w.e.f.* 13.07.99; and in this regard the workman has succeeded in substantiating that he actually worked with the management of the Institute of Unani Medicine from 16.10.98 to 11.07.99 and his services have been terminated by the management without following procedure given in the Section 25 F of the Act.

16. Now, it is to be considered as to whether the workman is entitled for reinstatement. From the evidence produced by the workman it is not proved that his appointment was as a regular worker. Even the statement of workman himself goes to show that he was engaged by one Harbhans Singh, an employee of the Institute; and was not given any appointment letter etc. Admittedly, the services of the workman were terminated on 13.07.99. In (2005) 5 SCC 591; 2005 SCC (L&S) 716 Haryana Roadways vs. Rudan Singh Hon'ble Apex Court while considering the question regarding award of back wages has observed:

"There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of section 25 F of the Act, entire back wages should be awarded ..... However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period *i.e.* from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which required to be taken into consideration, is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

17. In 2008 (119) FLR 877 *Deepak Ganpat Tari vs. N.E. Theater Pvt. Ltd.* Hon'ble Bombay High Court relying on the Hon'ble Apex Court's judgment in 2008 (117) FLR 1086 (SC) *A P V K Brahmandandam* 2008 (118) FLR 376 (SC) *Telephone DM vs. Keshab Deb* 2006 (111) FLR 1178 (SC) *JDA vs. Ram Sahai*, while awarding compensation of Rs. 1,50,000/- to the concerned workman considering his daily wages as Rs. 45/- in view of the fact that the workman had put in about 3 years of service, has observed as under:

"It is apparent that termination of services of a daily wager does not amount to retrenchment and for violation of section 25 F in such circumstances, the employee cannot be given benefit of reinstatement with continuity and back wages. Hon'ble Apex Court has hold that in such circumstance employee is entitled to benefit of compensation only."

18. Also, in *Jagbir Singh v. Haryana State Agriculture Mktg. Board* (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545: *Senior Superintendent Telegraph (Traffic), Bhopal v. Santosh Kumar Seal and others* (2010) 2 SSC (L&S) 309 Hon'ble Apex Court has observed as under:

"However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded."

19. In the light of principle laid down in aforementioned case laws, it would not be just and proper to direct that the workman be reinstated in service.

The ends of justice would meet by paying compensation to the workman instead in place of relief of reinstatement in service.

20. Having regards to these facts that the workman has worked as daily wager only and he was getting Rs. 42.50 per day at the time of his alleged termination and keeping in view the entire facts of the case and the law, the interest of justice would be subserved, if, management is directed to pay lump sum amount of compensation of Rs. 85,000/- only.

21. Accordingly the management is directed to pay a sum of Rs. 85,000/- (Rupees Eighty Five Thousand only)



to the workman as compensation for termination of his services in violation of section 25 F of the I.D. Act. The said amount shall be paid to the workman within 08 weeks of publication of the award, failing which; the same shall carry interest @ 8% per annum.

22. The reference is answered accordingly.

LUCKNOW.

29th October, 2013.

DR. MANJU NIGAM, Presiding Officer

नई दिल्ली, 18 नवम्बर, 2013

**का०आ० 2608.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स ई यू एम पी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 03/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.11.2013 को प्राप्त हुआ था।

[सं० एल-42012/27/2001-आईआर (सी एम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 18th November, 2013

**S.O. 2608.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 03/2002) of the Central. Govt. Indus Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Institute of Unani Medicine Plants, and their workmen, received by the Central Government on 18/11/2013.

[No. L-42012/27/2001-IR(CM-II)]

B. M. PATNAIK, Desk Officer.

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT LUCKNOW

**Present :** Dr. Manju Nigam, Presiding Officer

**I.D. No. 03/2002**

Ref. No. L-42012/27/2001-IR(CM-II) dated: 09.01.2002

#### BETWEEN

Shri Ram S/o Moti Lal  
R/o Village Raniapu  
Post-Aurawan  
Distt. Lucknow

#### AND

The Project Coordinator  
Institute of Unani Medicine Plants  
Kurshi Road, Sec. 'C', Jankipuram  
Lucknow.

#### AWARD

1. By order No. L-42012/27/2001-IR(CM-II) dated: 09.01.2002 and corrigendum dated 08.07.2002, the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Ram S/o Moti Lal, R/o Village Raniapu, Post-Aurawan, Distt. Lucknow and the Project Coordinator, Institute of Unani Medicine Plants, Kurshi Road, Sec. 'C', Jankipuram, Lucknow to CGIT-cum-Labour Court, Lucknow for adjudication.

2. The reference under adjudication is:

"Whether the Action of The Management of Unani Medicinal Plants in Terminating the Services of Shri Ram S/O Sh.Moti Lal on 13.07.1999 is Legal and Justified? If not, to what relief the Workman is Entitled to?"

3. The case of the workman, Shri Ram, in brief, is that he was engaged by the opposite party *w.e.f.* May, 1997 as a labour on daily wages @ Rs. 42.50 per day; and he worked accordingly, continuously up to 13.07.1999, including Sundays and holidays. He has alleged that his services have been terminated *w.e.f.* 13.07.1999 without any rhyme or reason, notice or notice pay in lieu thereof, in violation to the provisions contained in the Industrial Disputes Act, 1947. Hence, the workman has prayed to set aside his termination and reinstate him with consequential benefits including full back wages.

4. The management of the Unani Medicine has disputed the claim of the workman by filing its written statement; wherein it has stated that the workman was not employed by it; rather he was engaged on daily/temporary basis. The opposite party has pleaded that the applicant is not the workman; moreover it is not an 'industry' within the provisions of Act as its main object is to carryout research work and is not indulge in any trade, business. It has been submitted that the labours are engaged as per need of the work and the applicant has worked with it *w.e.f.* 16.10.98 to 11.07.99 with several breaks only for 96 days and never remained in continuous work. It has further submitted that the alleged disengagement was automatic and in terms of standing orders; accordingly.

5. The workman has filed its rejoinder wherein apart from the averments already made in the statement of claim he has submitted that the opposite party has admitted of having workman worked with it therefore, he is a workman as defined under Section 2 (s) of the Industrial Disputes Act, 1947. Further, it has denied the contentions of the opposite party that the establishment of Unani Medicine is not an 'industry' and has submitted that the same is covered under the terms of 'industry' as defined under Section 2 (j) of the Act.

6. The parties have field documentary evidence in support of their respective stand. The workman examined himself whereas the management has though filed affidavits of Miss Rafat Mahmooda, Dy. Director In Charge and of Dr. Idris Ahemad, Technical Advisor in support of their case, but produced none for their cross-examination.

7. Having gone through entire evidence on record, it comes out that the case was referred to this tribunal in the year 2002 and after conclusion of pleadings on behalf of the parties the case was fixed for evidence on 25.03.2004; and the workman's evidence was recorded on 20.11.2003; however his cross-examination could not be done due to absence of the opposite party. When the opposite party did not turn up for cross-examination of the workman, the case was proceeded to ex-parte against the management *vide* order dated 08.11.2006 and next date 18.01.2007 was fixed for management's evidence. The opportunity to lead evidence by the management was closed due to their negligence for same *vide* order dated 13.04.2009 and case was fixed for 13.05.2009 for arguments. The order dated 13.04.2009 was recalled *vide* order dated 13.05.2009 on moving application by the management and no objection from the workman; and accordingly, 30.07.2009 was fixed for opposite party's evidence. After passage of so many dated the opposite party filed evidences of its two witnesses *viz.* Miss Rafat Mahmooda, Dy. Director In Charge and of Dr. Idris Ahemad, Technical Advisor on 16.12.2010 and next date 28.01.2011 was fixed for cross-examination of the management witnesses. Thereafter, the case was fixed on 28.01.2011, 09.03.2011, 04.05.2011, 16.06.2011, 17.08.2011, 03.10.2011, 28.11.2011, 18.01.2012, 15.03.2012 and 03.05.2012; but the management did not produced the management witnesses for cross examination; accordingly, keeping in view reluctance of the management to produce it witness for cross-examination for more than one & half year, the opportunity to get their witness cross-examined was closed *vide* order dated 03.05.2012 and case was fixed for 13.06.2012 for arguments. Since then the case was listed for argument on 13.06.2012, 07.08.2012, 03.10.2012, 02.11.2012, 20.12.2012, 04.02.2013 and 27.02.2013; but none turned up from the management to argue their case nor filed any adjournment. Thus due to non-appearance of management for long the workman's representative was heard and case was reserved for award keeping in view reluctance of the management and long pendency of the case, since 2002.

8. Heard representatives of the workman only and scanned entire evidence on record.

9. The authorized representative of the workman has contended that the opposite party is indulge in research activities, which is not sovereign function; also, the result of their research is being used by the Government and other agencies for drug manufacturing, therefore, the opposite party comes within the definition of 'Industry' as

defined in the Section 2 'j' of the Act. He has further contended that the applicant is 'workman' as it is evident from the written statement of the management itself that he was engaged as labour for 96 days. The authorized representative has argued that the workman has well established through his oral testimony before this Tribunal that he has worked from 16.10.98 to 11.07.99 continuously and the same is reliable in view of non-submission of any evidence by the management or rebuttal of workman's evidence. It has also been submitted by the representative of the workman that the workman has worked continuously for more than 240 days on daily wages and his services were terminated *w.e.f.* 13.07.99; without any notice or compensation, in violation of the provisions contended in Section 25 F of the I.D. Act.

10. I have given my thoughtful consideration to the contentions of the representatives of the workman and perused respective pleadings of the parties.

11. The workman in his statement on oath has stated that he worked from 16.10.98 to 11.07.99 continuously and he was paid @ Rs. 42.50 per day as labour. The workman has filed photocopy of Muster Roll for the month of July, 99 and that of Acquaintance Roll for the month of May, 99, June, 99, July, 99 in support of his claim. The management has though filed affidavits of its two witness; but has not turned up for their cross-examination, therefore, their evidence cannot be taken into account, which makes the evidence of the workman uncontroverted.

12. As regard pleading of the management that the applicant is not workman under provisions of the Act, it has not submitted any specific chart of duties of the applicant which goes to show that he is not workman. On the contrary, it is admitted that the applicant was engaged as labour for 96 days by the opposite party. This admission of the management itself clears the picture that the applicant is 'workman' within the criterion provided in Section 2 's' of the Act as per management's admission the applicant was engaged as 'labour' for some time. Therefore, it of the firm opinion that the applicant is 'workman' within the terms of the Act.

13. Further, the management has taken plea that it is not an 'industry' as defined in Section 2 'j' of the Act. In this regard the workman has argued that the opposite party is industry as it qualifies the 'triple test' provided by Hon'ble Supreme Court in Bangalore Water Supply case.

The parties have relied on verdict of Hon'ble Apex Court in Bangalore Water Supply & Sewerage Board etc. *vs.* A. Rajappa & others case; wherein it has been observed that:

"absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector."

Hon'ble Apex Court has further observed that:

"Where (i) systematic activity (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss *i.e.* making on a large scale Prasad or food) *prima facie*, there is an industry in that enterprise."

It is clear that Institute of Unani Medicine Plants carries out research work by cultivating certain 'Herb plant'; the management has submitted that outcome of the such research is used through their hospitals and dispensaries free of cost and there is no trade activity or profit motive involved. In above cited case law Hon'ble Supreme Court is of the view that the "absence of profit motive or gainful objective is irrelevant" provided an establishment qualifies the triple test, it is an industry. In this case the result of research work is used by the hospitals and dispensaries for better prospect of human being; also, the work carried out by the Institute of Unani Medicine is not 'sovereign' in nature as same work is performed by other research laboratories etc. This indicates that the nature of work carried out by Institute of Unani Medicine qualifies the triple test, formulated by Hon'ble Apex Court in Bangalore Water Supply case. Thus, in view of facts and circumstances of the case and above legal propositions, I am of considered opinion that Institute of Unani Medicine is an 'industry' within the provisions of Section 2 (j) of the Industrial Disputes Act, 1947.

14. Now coming to the merit of the case, it is apparent on the face of record that the management did not rebutted the evidence of the workman inspite of ample opportunity was afforded to them since 18.01.2007; but it failed to do so, resulting into workman's evidence uncontroverted. He has also stated that he worked continuously from 16.10.98 to 11.07.99 and has some evidence in his support; and to corroborate his evidence, the workman has filed photocopy of acquaintance roll for the month of May, 99, June, 99 and July, 99, which goes to show his continuous working in said months, this goes to show that the workman had actually worked with the management and in the absence of any evidence from the management there is no reason to disbelief the statement of the workman that he worked continuously from 16.10.98 to 11.07.99. The management has neither pleaded nor there is any evidence on record that it compiled with the provisions contained in Section 25 F of the I.D. Act, 1947 while disengaging the workman.

15. The terms of the reference says that this Tribunal has to adjudicate upon the validity of action of the management in terminating the services of the workman *w.e.f.* 13.07.99; and in this regard the workman has succeeded in substantiating that he actually worked with

the management of the Institute of Unani Medicine from 16.10.98 to 11.07.99 and his services have been terminated by the management without following procedure given in the Section 25 F of the Act.

16. Now, it is to be considered as to whether the workman is entitled for reinstatement. From the evidence produced by the workman it is not proved that his appointment was as a regular worker. Even the statement of workman himself goes to show that he was engaged by one Harbansh Singh, an employee of the Institute; and was not given any appointment letter etc. Admittedly, the services of the workman were terminated on 13.07.99. In (2005) 5 SCC 591; 2005 SCC (L&S) 716 Haryana Roadways vs. Rudhan Singh Hon'ble Apex Court while considering the question regarding award of back wages has observed:

"There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25 F of the Act, entire back wages should be awarded ..... However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period *i.e.* from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which required to be taken into consideration, is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

17. In 2008 (119) FLR 877 Deepak Ganpat Tari Vs. N.E. Theater Pvt. Ltd. Hon'ble Bombay High Court relying on the Hon'ble Apex Court's judgment in 2008 (117) FLR 1086 (SC) APVK Brahmanandam 2008 (118) FLR 376 (SC) Telephone DM Vs. Keshab Deb 2006 (111) FLR 1178 (SC) JDA vs. Ram Sahai, while awarding compensation of Rs. 1,50,000/- to the concerned workman considering his daily wages as Rs. 45/- in view of the fact that the workman had put in about 3 years of service, has observed as under:

"It is apparent that termination of services of a daily wage does not amount to retrenchment and for violation of Section 25 F in such circumstances, the employee cannot be given benefit of reinstatement with continuity and back wages. Hon'ble Apex Court has held that in such circumstance employee is entitled to benefit of compensation only."

18. Also, in Jagbir Singh v. Haryana State Agriculture Mktg. Board (2009) 15 SCC 327; (2010) 1 SCC (L&S) 545: Senior Superintendent Telegraph (Traffic), Bhopal Vs. Santosh Kumar Seal and others (2010) 2 SSC (L&S) 309 Hon'ble Apex Court has observed as under:

"However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wages has not been found to be proper by this Court and instead compensation has been awarded."

19. In the light of principle laid down in aforementioned case laws, it would not be just and proper to direct that the workman be reinstated in service. The ends of justice would meet by paying compensation to the workman instead in place of relief of reinstatement in service.

20. Having regards to these facts that the workman has worked as daily wager only and he was getting Rs. 42.50 per day at the time of his alleged termination and keeping in view the entire facts of the case and the law, the interest of justice would be subserved, if, management is directed to pay lump sum amount of compensation only.

21. Accordingly, the management is directed to pay a sum of Rs. 80,000/- (Rupees Eighty Thousand only) to the workman as compensation for termination of his services in violation of Section 25 F of the I.D. Act. The said amount shall be paid to the workman within 8 weeks of publication of the award, failing which; the same shall carry interest @ 8% per annum.

22. The reference is answered accordingly.

LUCKNOW,  
23rd October, 2013.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 18 नवम्बर, 2013

**कांआ 2609.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सी पी आई के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं 1, धनबाद के पंचाट (संदर्भ संख्या 94/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/11/2013 को प्राप्त हुआ था।

[सं एल-42012/292/2001-आईआर (सी एम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 18th November, 2013

**S.O. 2609.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 94/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Central Potato Research Institute, and their workmen, received by the Central Government on 18/11/2013.

[No. L-42012/292/2001-IR(CM-II)]

B.M. PATNAIK, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

In the Matter of a Reference u/s 10(1) (D) (2A) of  
I.D. Act, 1947

**Ref. No. 94 of 2002**

Employers in relation to the management of Central  
Potato Research Institute, Patna

AND

Their workmen.

**Present:** Sri Ranjan Kumar Saran,  
Presiding Officer

#### Appearances:

For the Employers.:	Sri D.K. Verma, Advocate
For the workman.:	Sri D. Mukherjee, Advocate
State: Bihar	Industry: Agriculture
	Dated 30/10/2013

#### AWARD

By Order No. L-42012/292/2001-IR (CM-II), dated 09-08-2002, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

#### SCHEDULE

"Whether the action of the management of Central Potato Research Centre, Patna in terminating the service of Sh. Raj Kumar Singh is legal and justified? If not, to what relief the workman is entitled to?"

2. The case is received from the Ministry of Labour on 11.09.2002. After receipt of the reference, both parties are noticed, the workman along with Sponsoring Union files their written statement on 27.11.2002. The management files their written statement 25.02.2003. Rejoinder and documents are also filed by the parties. Examined the witnesses from both side.



3. The workman claim is he be regularised as temporary workman as he has already rendered 240 days work including Sunday in a calendar year prior to termination.

4. On the other hand that the workman was a purely temporary worker and after his work ceases his services was terminated.

5. It is also submitted by the management, after termination the workman approached Central Administrative Tribunal, the lost there.; There after he approached High Court in WJC 432/2001 and there also his claim was not accepted.

6. It is submitted by the workman either CAT or the High Court, failed to appreciate the beneficial provisions of the I.D. Act, therefore the Tribunal has jurisdiction to impart justice.

7. But the view of this Tribunal is while when the workman has already lost in two consecutive forums, this forum will not extend any liberal hand to the workman.

8. Considering the facts and circumstances of this case, I hold that the action of the management of Central Potato Research Centre, Patna in terminating the service of Sh. Raj Kumar Singh is legal and justified, and he is not entitled to get any relief, Accordingly award answered against the workman.

This is my award

R.K. SARAN, Presiding Officer

नई दिल्ली, 18 नवम्बर, 2013

**का०आ० 2610.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 11/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/11/2013 को प्राप्त हुआ था।

[सं० एल-22012/9/2012-आईआर (सी एम- II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 18th November, 2013

**S.O. 2610.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 11/2012 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 18/11/2013.

[No.L-22012/9/2012-IR(CM-II)]

B.M. PATNAIK, Desk Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

**Present :** Smt. M. Vijaya Lakshmi,  
Presiding Officer

Dated the 27th day of August, 2013

**Industrial Dispute No. I.D. 11/2012**

Between:

The General Secretary,  
(Shri Raiz Ahmed)  
Singareni Miners & Engg. Workers Union (HMS),  
C-34, Sector-I,  
Godavarikhani-505209. Petitioner

AND

The General Manager,  
M/s. Singareni Collieries Company Limited,  
Bhupalapally Area, Bhupalapally,  
Warangal Dist.-506169. Respondent

### Appearances:

For the Petitioner: NIL

For the Respondent: NIL

### AWARD

The Government of India, Ministry of Labour by its order No. L-22012/9/2012-IR(CM-II) dated 28.3.2012 referred the following dispute between the management of M/s. Singareni Collieries Company Ltd., and their workman under Section 10(1) (d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

### SCHEDULE

“Whether the action the management of General Manager, M/s Singareni Collieries Company Ltd., Bhupalapalli Area, in terminating the services of Sri Bandirala Venkateswarlu, Ex-Coal Filler, KTK-5 Incline, Bhupalapalli Area with effect from 5.9.2007 is fair and justified? To what relief the concerned workman is entitled?”

The reference is numbered in this Tribunal as I.D. No. 11/2012 and notices were issued to the parties.

2. The case stands posted for filling of claim statement and documents. Petitioner union called absent and there is no representation. Claim statement not filed. In spite of giving fair opportunity and since the year 2012 claim statement is not filed. In the circumstances, taking that Petitioner union is not interested in the proceedings, petition is dismissed.

Award passed accordingly, Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 27th day of August, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

#### Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner  
NIL

Documents marked for the Respondent  
NIL

नई दिल्ली, 18 नवम्बर, 2013

**का.आ. 2611.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस सी सी एल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 58/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/11/2013 को प्राप्त हुआ था।

[सं. एल-22012/126/2012-आईआर (सी एम-II)]

बी.एम. पटनायक, डेस्क अधिकारी

New Delhi, the 18th November, 2013

**S.O. 2611.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 18/11/2013.

[No. L-22012/126/2012-IR (CM-II)]

B. M. PATNAIK, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

**Present :** Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 3rd day of October, 2013

**Industrial Dispute No. I.D. 58/2012**

**Between :**

The General Secretary,  
(Sri Bhandari Satyanarayana)  
Singareni Telugu Nadu Trade Union Council (STNTUC),  
H.No. 5-295, Indira Nagar,

Opp. Bus Stand, Mancherial,  
Adilabad Dist.—504208.

...Petitioner

AND

The General Manager,  
M/s. Singareni Collieries Company Limited,  
Bellampally Area, Goleti Township,  
Adilabad district-504292

....Respondent

#### Appearances :

For the Petitioner: NIL

For the Respondent: Sri S.M. Subhani, Advocate

#### AWARD

The Government of India, Ministry of Labour by its Order No. L-22012/126/2012-IR(CM-II) dated 26.9.2012 referred the following dispute between the management of M/s. Singareni Collieries Company Ltd., and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

#### SCHEDULE

"Whether the action the Chief General Manager of M/s. Singareni Collieries Company Ltd., Bellampally Area, Goleti Township, Adilabad District in terminating the services of Shri Abbasi Lachiah, Ex-Gen. Mazdoor, Goleti No.1 Inc., of Bellampally Area with effect from 11.10.2001 is justified or not? To what relief the applicant is entitled for?"

The reference is numbered in this Tribunal as I.D. No. 58/2012 and notices were issued to the parties.

2. Case stands posted for appearance of Petitioner union and for filing of claim statement and documents.

3. Petitioner union called absent and there is no representation since long time. Claim statement not filed inspite of giving fair opportunity. In the circumstances, taking that Petitioner union is not interested in the proceedings, petition is dismissed.

Award passed accordingly. Transmit.

Dictated to Sri. J. Vijaya Sarathi, UDC transcribed by him and corrected by me on this the 3rd day of October, 2013.

M.VIJAYA LAKSHMI, Presiding Officer,

#### Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

## Documents marked for the Petitioner

NIL

## Documents marked for the Respondent

NIL

नई दिल्ली, 18 नवम्बर, 2013

का०आ० 2612.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 44/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/11/2013 को प्राप्त हुआ था।

[सं० एल-22012/95/2011-आईआर (सीएम-II)]  
बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 18th November, 2013

**S.O. 2612.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. SCCL and their workmen, received by the Central Government on 18/11/2013.

[No. L-22012/95/2011-IR (CM-II)]  
B. M. PATNAIK, Desk Officer

## ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT AT HYDERABAD**

**Present:** Smt. M. Vijaya Lakshmi, Presiding Officer  
Dated the 21st day of August, 2013

**INDUSTRIAL DISPUTE NO. I.D. 44/2011****Between:**

The General Secretary,  
(Sri Bhandari Satyanarayana)  
Singareni TNTUC,  
H.No. 18-3-90/3, Ganesh Nagar,  
Markandeya Colony,  
Godavarikhani-505209. ...Petitioner

AND

The General Manager,  
M/s. Singareni Collieries Company Limited,  
Mandamarri Division,  
Mandamarri-504 303. ...Respondent

**Appearances :**

For the Petitioner: NIL

For the Respondent: M/s. P.A.V.V.S. Sarma &amp; Vijaya Lakshmi, Advocates

**AWARD**

The Government of India, Ministry of Labour by its Order No. L-22012/95/2011-IR(CM-II) dated 2.8.2011 referred the following dispute between the management of M/s. Singareni Collieries Company Ltd., and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

**SCHEDULE**

"Whether the action the Management of General Manager of M/s. Singareni Collieries Company Ltd., Mandamarri Division, Adilabad District in dismissing the services of Shri Gaini Kumar, Ex-Timberman, Shantikhani Mine of SCCL/Mandamarri Division w.e.f. 18.10.2007 is justified? To what relief the workman concerned is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 44/2011 and notices were issued to the parties.

2. The Case stands posted for appearance of Petitioner union and for filing of claim statement and documents. Petitioner union called absent and there is no representation. Claim statement not filed since 2011 inspite of giving fair opportunity. In the circumstances, taking that Petitioner union is not interested in the proceedings, petition is dismissed.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 21st day of August, 2013.

M. VIJAYALAKSHMI, Presiding Officer

**Appendix of evidence**

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
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NIL	NIL
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Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 18 नवम्बर, 2013

**का०आ० 2613.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 31/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/11/2013 को प्राप्त हुआ था।

[सं० एल-22012/65/2011-आईआर (सीएम-II)]  
बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 18th November, 2013

**S.O. 2613.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Co. Ltd., and their workmen, received by the Central Government on 18/11/2013.

[No. L-22012/65/2011-IR(CM-II)]  
B. M. PATNAIK, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

**Present :** Smt. M. Vijaya Lakshmi, Presiding Officer

Dated the 21st day of August, 2013

#### INDUSTRIAL DISPUTE No. I.D. 31/2011

#### Between :

The General Secretary,  
(Sri Bandari Satyanarayana)  
Singareni TNTUC,  
H.No. 18-3-90/3, Ganesh Nagar,  
Markandeya Colony,  
Godavarikhani-505209. ....Petitioner

AND

The General Manager,  
M/s. Singareni Collieries Company Limited,  
Mandamarri Division,  
Mandamarri-504 303. ....Respondent

#### Appearances :

For the Petitioner: NIL  
For the Respondent: NIL

#### AWARD

The Government of India, Ministry of Labour by its Order No. L-22012/65/2011-IR(CM-II) dated 11.7.2011 referred the following dispute between the management of M/s. Singareni Collieries Company Ltd., and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

#### SCHEDULE

“Whether the action the management of General Manager of M/s. Singareni Collieries Company Ltd., Mandamarri Division, Adilabad District in dismissing the services of Sri Kotha Thirupathi, Ex-Badli Filler, KK-5A Inc., of Mandamarri Division w.e.f. 11.5.2002 is justified? To what relief the workman concerned is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 31/2011 and notices were issued to the parties.

2. The case stands posted for filing of claim statement and documents. Petitioner union called absent and there is no representation. Claim statement not filed since 2011 inspite of giving fair opportunity. In the circumstances, taking that Petitioner union is not interested in the proceedings, petition is dismissed.

Award passed accordingly, Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 21st day of August, 2013.

M. VIJAYALAKSHMI, Presiding Officer

#### Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 19 नवम्बर, 2013

**का०आ० 2614.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एम सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 87/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/11/2013 को प्राप्त हुआ था।

[सं० एल-22012/142/2012-आईआर (सीएम-II)]  
बी० एम० पटनायक, डेस्क अधिकारी



New Delhi, the 19th November, 2013

**S.O. 2614.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 87/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Jagannath Area of MCL, and their workmen, received by the Central Government on 19/11/2013.

[No. L-22012/142/2012-IR(CM-II)]  
B.M. PATNAIK, Desk Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT,  
BHUBANESWAR**

**Present :** Shri J. Srivastava, Presiding Officer,  
C.G.I.T.-cum-Labour Court, Bhubaneswar

**INDUSTRIAL DISPUTE CASE No. 87/2012**

**Date of Passing Order-6th August, 2013**

**Between:**

The Chief General Manager,  
Jagannath Area of MCL  
P.O. South Balanda, Dist. Angul,  
Orissa. ...1st Party-Managements.

**AND**

The General Secretary, Talcher,  
Koila Khani Mazdoor Sangh, At. Jamde Bhavan,  
P.O. South Balanda, Dist. Angul,  
Orissa-759116. ...2nd Party-Union

**Appearances:**

None. ... For the 1st Party-Management.  
None. ... For the 2nd Party-Union.

**ORDER**

Case taken up. None of the parties is present. No statement of claim has been filed despite sending two notices, one on 28.1.2013 by ordinary post and the other on 7.5.2013 by regd. post, though the authorized representative for the 2nd Party-Union appeared in the court on 26.2.2013 and 26.6.2013. The 2nd Party-Union has not even explained the reasons for not filing the statement of claim nor moved any petition for time. Without the pleadings of the parties the dispute under reference cannot be adjudicated. Hence the reference is liable to be returned to the Government unanswered. Accordingly the reference is returned to the Government unanswered for taking necessary action at its end.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 19 नवम्बर, 2013

**कांआ 2615.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सीआईएफए के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय भुवनेश्वर के पंचाट (संदर्भ संख्या 19/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/11/2013 को प्राप्त हुआ था।

[सं एल-42012/22/2003-आईआर (सीएम-II)]  
बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 19th November, 2013

**S.O. 2615.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Central Institute of Freshwater Aquaculture (CIFA), and their workmen, received by the Central Government on 19/11/2013.

[No. L-42012/22/2003-IR (CM-II)]  
B.M. PATNAIK, Desk Officer

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, BHUBANESWAR**

**Present :** Shri J. Srivastava, Presiding Officer,  
C.G.I.T.-cum-Labour Court, Bhubaneswar

**INDUSTRIAL DISPUTE CASE No. 19/2003**

**Date of Passing Award-17th July, 2013**

**Between :**

The Director, Central Institute of  
Freshwater Aquaculture, Kausalyagang,  
Bhubaneswar. ....1st Party-Management.

**AND**

Their workmen Shri Harekrushna Sahu and  
Others C/o Sh. Maheswar Sahu,  
At. Uttarasasan, PO. Kausalyagang,  
P.S. Pipli, Dist. Puri. .... 2nd Party-Workmen.

**Appearance :**

Shri K.C. Das, .... For the 1st Party-  
Admn. Officer Management  
Shri Prakash Kumar Baul .... For Himself and  
Other workmen.

**AWARD**

The Government of India in the Ministry of Labour  
vide its letter No. L-42012/22/2003-IR(CM-II), dated

11.07.2003 has referred an industrial dispute existing between the employers in relation to the management of Central Institute of Freshwater Aquaculture (CIFA) and their workmen in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 in respect of the following matter:—

“Whether the action of the management of Central Institute of Freshwater Aquaculture, Kausalyagang in terminating the services of S/Shri Harekrushan Sahu, Bichitrananda Panda, Ghanashyam Swain, Prafulla Kumar Biswal, Sudam Charan Mohanty, Prakash Kumar Bhaul and Maharban Mohammad without complying Section 25 of I.D. Act, making discrimination between the co-workers, not paying their wages @ 1/30th of pay scale of Group 'D' employees and denying their wages w.e.f. 1.7.2002 is legal and justified? If not, to what relief the workmen are entitled?

2. The disputant workmen filed their statement of claim in which they have alleged that they all were employed by the management of CIFA, Kausalyagang and had been working since 1994/1996 continuously till their illegal termination on 6.8.2002. In June, 1996 they were appointed against a sponsored project called "Mission Mode Prawn and Aquaculture shortly known as MMPA. Four workmen namely Harekrushna Sahu, Bichitrananda Panda, Ghanashyam Swain, and Prafulla Kumar Biswal, who were working since 1994, were taken into the said project as in service candidates and the remaining three were appointed in the Project as fresh recruits. Initially they were getting wages @ of Rs. 1500/- per month which was subsequently enhanced to Rs. 3000/- per month. Even though the tenure of appointment as mentioned in the appointment order was up to 31.3.1998 or till the completion of the project whichever was earlier, the workmen continued to work regularly till 6.8.2002. Later the completion of the project was extended up to 31.3.2000 and it was closed on the same date. After completion of the project all the seven workmen were allowed to continue by verbal instructions of the authority and were assigned with different jobs under the Management. During their service period they were performing their duties in feed-mill operation, fishing and other related work of prawn cultivation. The work which the 2nd Party-workmen were performing is perennial in nature and being carried on for prawn cultivation in continuous process from before the sponsoring of the M.M.P.A. project and is still continuing after closure of the above project. The Management after completion of the project tried to change the nature of their employment from departmental worker to contract worker and asked them to receive their wages from the contractor. The Management also threatened to terminate their services if they do not receive their wages from the contractor. Their monthly wages were also reduced from Rs. 3000/- to Rs. 2230/- when

the disputant workmen protested against the vindictive, unlawful and arbitrary action of the management. All of them excepting one were denied their wages from the month of May, 2000. The exception was Shri Bichitrananda Panda who was paid his wages up to August, 2000 and denied wages from Sept., 2000. Vide order dated 24.1.2002 passed by the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar in Misc. Case No. 4/2001 the Management/Opp. Party was directed to make payment to wages @ of Rs. 3000/- per month to the disputant workmen and pursuant to that order the 1st Party-Management paid wages to them till June, 2002. Thereafter adopting vindictive attitude the Management issued termination order to all the seven workmen on 6.8.2002 while they were working continuously from the date of their joining till the date of termination thereby constituting continuous service of more than one year as defined under section 25/B of the Industrial Disputes Act. As such provisions of Section 25-F of the aforesaid Act are applicable to their case. Neither any notice nor retrenchment compensation was given to them prior to termination. Principles of natural justice have also not been followed by the Management. Continuance of their service for more than two years after closure of the MMPA project cannot be said to be within the tenure of the execution of the said project. Moreover four workmen were working since 1994 before coming into the MMPA Project. Many of the workers engaged in various sponsored projects taken up by the CIFA are allowed to work even after completion of the project and have been brought to regular cadre. The termination of the services of the disputant workmen is therefore illegal and unjustified and they are entitled to reinstatement with full back wages.

3. As regards grant of 1/30th pay to the disputant workmen in the pay scale of Group "D" employees it has been submitted that CIFA, Kausalyagang is an unit of Indian Council of Agriculture and Research under the Ministry of Agriculture, Government of India and functions under the guidelines, circulars and notifications issued by the Government of India/ICAR. The ICAR has issued guidelines/directions to CIFA to grant 1/30th pay in the pay scale of Group "D" employees to casual workers those who have completed 240 days of work. The disputant workmen namely Shri Bichitrananda Panda has been granted 1/30th pay, but the other disputant workmen having equal status have not been granted 1/30th pay even after completion of six to eight years of continuous service. The Management has also not paid them duty pay from 1.7.2002 till the date of termination for the reasons best known to it and the matter is said to have been referred to ICAR for approval. Therefore all the disputant workmen be reinstated in their services with full back wages from the date of termination and be paid wages at the rate of 1/30th pay in the pay scale of Group "D" employees and duty pay from 1.7.2002 to 6.8.2002.

4. The 1st Party-Management in its written statement has alleged that the dispute is not maintainable in as much as the organization of CIFA is not an industry under section 2(j) of the Industrial Disputes Act, 1947. It is a research organization and does not manufacture or produce any goods for commercial purpose. The predominant nature of job is research in Freshwater Aquaculture etc. The disputant workmen were employed under a project called Mission Mode Prawn Aquaculture shortly known as MMPA project for a specified period. They were appointed till 31.3.1998 or the termination of the project whichever was earlier. The disputant workmen have no right to claim service under the CIFA. Initially the project was to complete on 31.3.1998, but the period of completion was extended from time to time. The project was finally closed on 31.3.2000. The disputant workmen were allowed to continue to work till the aforesaid date and were paid wages till that date. After completion of the project they were allowed to continue for some residuary ancillary work of the project, such as guarding and cleaning of machineries, unkeep of tools and implements and other miscellaneous work of the said project till the materials are finally shifted from CIFA. Since funds allotted to the project were exhausted the disputant workmen were not paid their wages from May, 2000. On direction of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar passed on a petition filed by the disputant workmen under section 33-C(2) of the Industrial Disputes Act they were paid their wages upto June, 2002 on sanction of additional funds from the ICAR. Since the disputant workmen were employed for a particular project for a specific period as stipulated in their appointment order and they have been terminated from service on completion of the said project, their termination cannot be termed as retrenchment under section 2(oo) of the Industrial Disputes Act, 1947 and compliance of Section 25-F of the said Act is not required. There was no master and servant relationship between the Management of CIFA and the disputant workmen. The first four disputant-workmen as mentioned in Para-4 of their statement of claim were engaged in different miscellaneous jobs in 1994, but they were appointment in MMPA project on their application from 27.6.1996. Their engagement in the said project is separate from that of their earlier engagement. Therefore their engagement from 1994 cannot be said to be continuous. It is not proved that the disputant workmen were performing the duties of perennial nature relating to prawn cultivation. It is not a continuous process of work as alleged. The allegation that the Management tried to change the nature of their employment from departmental to contract worker and asked to receive their wages through contractor is not correct. It is also not correct that the Management threatened to terminate their services and stop payment of wages from May, 2000. There is no question of regularizing the disputant workmen in regular vacancies as they do not fulfill the eligibility criteria in the post and have not come through due selection process.

Since the disputant workmen were appointed under a sponsored MMPA project, the principle of 1/30th of pay of Group "D" employees is not applicable to them. Shri Bichitrnanda Panda was given 1/30th pay for three months only from June, 2000 to August, 2000 since he had performed the duties of Group "D" employee as per certificates furnished by the concerned Scientists. The termination or disengagement of the disputant workmen cannot be said to be illegal or unjustified due to non-availability of the work.

5. The disputant workmen in their rejoinder have denied that after closure of the M.M.P.A. project they were engaged in some residuary and ancillary work of the project, but have stated that they were engaged for doing the job in feed mill operation, production of feed, Hatchery operation and production including sale of prawn seeds, culture activities including brood stock raising and other ancillary work such as guarding and up-keep of tools and machineries etc. They have further alleged that about 100 workmen who were recruited on later dates and were junior to the disputant workmen are allowed continuous engagement under the 1st Party-Management. Termination of services of the disputant workmen on the plea of closure of project is illegal, unjustified and violative of the provisions of the Industrial Disputes Act, 1947. There exists relationship of employer and employee between the Management of CIFA and the disputant workmen as all of them were recruited by the Management of CIFA and working under the control and supervision of CIFA and were paid their wages by CIFA. The work which was being done by the disputant workmen is of perennial nature and still in existence being done by engaging fresh persons in their place.

6. On the pleadings of the parties, following issues were framed.

#### ISSUES

1. Whether the reference is maintainable?
2. Whether the termination of services of S/Shri Harekrushna Sahu, Bichitra Nanda Panda, Ghanshayam Swain, Prafulla Kumar Biswal, Sudam Charan Mohanty, Prakash Kumar Bhaul and Meharban Mohammad by the management of CIFA is legal and justified?
3. Whether the workmen are entitled to wages @ 1/30th of pay scale of Group "D" employees and if so, whether they are entitled to such wages w.e.f. 01.07.2002?
4. If not, to what relief the workmen are entitled?
7. The 1st Party-Management has examined M.W.-1 Shri Chakradhar Sahoo and relied upon six documents marked as Ext.-A to Ext.-E/1. On the remand of the case by the Hon'ble High Court the



1st Party-Management has further examined one more witness namely Shri A.K. Prusty.

8. The disputant workmen have examined Shri Prakash Kumar Bhaul as W.W.-1 and Shri Bichitrnanda Panda as W.W.-2 and relied upon several documents marked as Ext.-1 to Ext.-11. The disputant workmen on remand of the case have further examined Shri Harekrushna Sahu.

### FINDINGS

#### ISSUE No. 1

9. The 1st Party-Management has challenged the maintainability of the reference on the ground that the organization of CIFA is not an "industry" as defined under Section 2(j) of the Industrial Disputes Act, 1947. It is a research organization and does not manufacture or produce any goods for commercial purpose. My learned predecessor while deciding this issue in his Award dated 30.10.2007 has misdirected himself and held that "this Tribunal has no jurisdiction to try the same for the reference not being in tune with the requirements of Section 10 of the Industrial Disputes Act", whereas the issues raised by him in coming to this conclusion were not picked up by any party to the reference nor come up to oust the jurisdiction of this Tribunal. The disputant workmen challenged the above findings of this Tribunal before the Hon'ble High Court of Orissa in Writ Petition No. 13974/2008. The Hon'ble High Court of Orissa vide its order dated 17.3.2011 has set aside the findings and remanded back the case to answer Issue No. 2 only with a direction to give opportunity to the parties, if either of them wants to adduce further evidence. Therefore it is implied in the order of the Hon'ble High court that this Tribunal has got jurisdiction to decide this reference holding its maintainability.

10. However in the definition of "industry" under clause (j) of Section 2 "any systematic activity carried on by Co-operation between an employer and his workmen for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes has been enacted whether or not any capital has been invested or whether or not such activity is carried on with a motive to make any gain or profit, but such an enterprise does not include any agricultural operation except when such agricultural operation is carried on in an integrated manner with any other activity and such other activity is the predominant one.

11. In the four corners of this definition I do not find that the organization of CIFA is not covered under the definition of "Industry". Moreover this issue also seems to have been foregone by the 1st Party-Management as nothing has been said by it in its argument. Thus it is held that the reference is maintainable. This issue is accordingly decided in the affirmative.

#### ISSUE No. 2

12. It is an admitted case of both the parties that the disputant workmen were appointed by the 1st Party-Management against a sponsored project called "Mission Mode Prawn and Aquaculture", shortly known as MMPA in June, 1996 upto 31.3.1998 or till the completion of the project whichever was earlier. Their term of appointment was extended upto 31.3.2000 with the extension of the project till that date. The project was closed on 31.3.2000, but all the disputant workmen were allowed to continue to work by verbal instruction till 6.8.2002 and were assigned with different jobs, according to the disputant workmen under the 1st Party-Management such as feed mill operation, fishing and other related work of prawn cultivation, and according to the 1st Party-Management in residuary and ancillary work of the project, such as guarding and cleaning of machineries, upkeep of tools and implements and other miscellaneous work of the said project till the materials are finally shifted from CIFA. The appointment to the disputant workmen was given upto 31.3.1998 or till the termination of the project, whichever is earlier as is admitted by the parties and is also reflected from the appointment letter dated 22.6.1996 marked as Ext.-E. Another document Ext.-D shows that the duration of the project was extended upto March, 2000. It has been stipulated in the Memorandum of appointment/selection, Ext.-E, which is similar to the Memorandum of appointment/selection issued to other disputant workmen, that "the individual shall not be a regular employee of the Institute and hence shall not be entitled to service benefits available to the regular staff". It has also been stipulated in the Memorandum that "the award of the post shall not confer on the individual any right to seek absorption in CIFA on termination of the Project".

13. Here the point of dispute between the parties is that after closure of the Project the disputant workmen were allowed to continue to work till 6.8.2002 and without giving prior legal notice of termination service and payment of compensation as required under section 25-F of the Industrial Disputes Act, 1947 their services were dispensed with. Hence, according to then, their termination is illegal and unjustified.

14. There is admittedly no dispute that the disputant workmen had worked till 6.8.2002, *i.e.* for more than two years after closure of the project while their appointment letters stipulated that their services will terminate with the closure of the project. When the disputant workmen were allowed to work continuously for more than two years after closure of the project, it is to be assumed that they were given fresh appointment or engagement by the 1st Party-Management and in that circumstance they cannot be said to be engaged against the M.M.P.A. project, though payment of their wages may be made out of the budget or finance sanctioned for the above project. Therefore



rendition of continuous service for more than 240 days during a period of 12 calendar months preceding the date of their termination makes the 1st Party-Management liable for compliance of provisions of Section 25-F of the Industrial Disputes Act, 1947. Retrenchment under clause (oo) of Section (2) of the aforesaid Act means the termination by the employer of the services of a workman for any reason, whatsoever, otherwise than as a punishment inflicted by way of disciplinary action. Since the disputant workmen were allowed to continue to work after closure of the project it will mean either a fresh contract of employment was created or renewal of contract of employment was made between the employer and the workmen. Therefore termination of services of the disputant workmen without compliance of provisions of Section 25-F of the Industrial Disputes Act, 1947 cannot be treated as legal and justified. This issue is accordingly decided in favour of the disputant workmen and against the 1st Part-Management.

### ISSUE No. 3

15. The disputant workmen have claimed wages at the rate of 1/30th of pay scale of Group-D employees as per guidelines of the ICAR on the ground that they had completed 240 days of work as casual workers seeking similarity to the case of Shri Bichitranda Panda who was granted 1/30th of pay admittedly for three months from June, 2002 to August, 2002. According to the 1st Party-Management Shri Bichitranda Panda had performed the duties equal to those of Group-D employees for the aforesaid three months as per certificates furnished by the concerned scientists under whom he had worked. Further the disputant workmen are not eligible for 1/30th pay of Group-D employees as they were engaged under a sponsored project and have not filed any proof of performing duties of Group-D employees. In my view the disputant workmen are not entitled to this benefit in terms of their letters of appointment. Even for the extended period they had worked as casual labourers as earlier. Hence their engagement cannot be given temporary status for entitlement of 1/30th pay of Group-D employees from 1.7.2002. Therefore this issue is decided in the negative and against the disputant workmen.

### ISSUE No. 4

16. In view of the finding recorded against Issue No. 2 above, the termination of services of the disputant workmen is found to be illegal and unjustified. But they cannot be reinstated in their respective posts as the project against which they were appointed has come to a close and a period of more than 11 years is going to expire since then. However they are entitled to some appropriate compensation which, in my view shall be Rs. 20,000/- to each of the disputant workmen in addition to the benefits accrued under Section 25-F of the Industrial Disputes Act, 1947 which entitles them to get fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months as retrenchment

compensation and one month's wages in lieu of notice as required.

17. The 1st Party-Management is, therefore, directed to pay a sum of Rs. 20,000/- to each of the disputant workmen as compensation in place of reinstatement of their services and one month's wages in lieu of statutory notice as required under section 25-F of the Industrial Disputes Act, besides fifteen days average pay for every completed year of continuous service of any part thereof in excess of six months within three months from the date of publication of the award.

18. This reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 19 नवम्बर, 2013

कांआ 2616.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एम सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 89/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/11/2013 को प्राप्त हुआ था।

[सं एल-22012/166/2012-आई आर (सीएम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 19th November, 2013

S.O. 2616.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 89/2012 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Jagannath Area, Mahanadi Coal Fields Ltd., and their workmen, received by the Central Government on 19/11/2013.

[No. L-22012/166/2012-IR(CM-II)]

B. M. PATNAIK, Desk Officer

### ANNEXURE

### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, BHUBANESWAR

#### Present :

Shri J. Srivastava,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

**Industrial Dispute Case No. 89/2012**

**Date of Passing Order-25th July, 2013**

#### Between :

The General Manager,  
Jagannath Area, Mahanadi Coal Fields Ltd.,  
Po. Talcher, Distt., Angul, Orissa.

..... 1st party-Management

(And)

The General Secretary, Talcher Koila  
Khani Mazdoor Sangh, At. Jamde Bhavan,  
Po. South Balanda, Distt. Angul, Orissa.

..... 2nd Party-Union.

## Appearances:

For the 1st Party ... None  
Management

For the 2nd Party ... None  
Workman

**ORDER**

Case taken up. Both the parties are absent. The 2nd party-Union was to file the statement of claim in response to the order of reference within fifteen days from the date of its receipt, but no statement of claim was filed within the stipulated time. Hence a notice by ordinary post was sent to the 2nd Party-Union, but the 2nd Party-Union failed to file any statement of claim by the date fixed. Thereafter a second notice was issued to the 2nd Party-Union under regd. Cover on 7.6.2013, but even then neither any office bearer of the 2nd Party-Union appeared nor filed the statement of claim. Thus the Union has not taken any steps to prosecute its case till to day even after lapse of a period of nearly eight months.

2. Therefore it appears that the 2nd Party-Union is either not interested in prosecuting its case or has settled the case amicably with the Management out of the court. The case cannot be allowed to linger on indefinitely when the statute requires it to be decided within three months.

3. In the above circumstances a no-dispute award is to be passed in the case. Accordingly a non-dispute award is passed.

4. The reference is answered in the above terms.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 19 नवम्बर, 2013

**कांआ 2617.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स ए आई लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय भुवनेश्वर के पंचाट (संदर्भ संख्या 2/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/11/2013 को प्राप्त हुआ था।

[सं एल-22012/176/2011-आईआर (सी एम-II)]  
बी एम पटनायक, डेस्क अधिकारी

New Delhi, the 19th November, 2013

**S.O. 2617.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 2/2012 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Atlanta Infrastructure Ltd. and their workmen, received by the Central Government on 19/11/2013.

[No. L-22012/176/2011-IR(CM-II)]  
B.M. PATNAIK, Desk Officer

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, BHUBANESWAR**

Present:

Shri J. Srivastava,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE No. 2/20012**

**Date of Passing Order - 29th July, 2013**

Between:

M/s. Atlanta Infrastructure Ltd.,  
101, Shree Ambasanti Chambers, Opp: Hotel  
Leela, Andheri Kurla Road, Andheri East,  
Mumbai - 400 059

... 1st Party-Management.

(And)

Their Workman Shri Sanatan Bhutia,  
At. Pandarabaran, Po. Bhuda Park,  
P.S. Banarpal, Angul.

... 2nd Party-Workman.

Appearances:

For the 1st Party ... None  
Management

For the 2nd Party ... None  
Workman

**ORDER**

This reference has come to this Tribunal/Labour Court *vide* letter No. L-22012/176/2011-IR(CM-II), dated 4.1.2012 of the Government of India, Ministry of Labour for adjudication of an industrial dispute between the employers of M/s. Atlanta Limited, 101, Shree Ambasanti Chambers, Mumbai and their workman.

2. While sending the copy of letter of reference to the parties the 2nd Party-workman raising the dispute was

directed to file a statement of claim complete with relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of the order of reference, but the 2nd Party-workman did not comply the direction. Hence a notice was issued to the 2nd Party-workman on 23.2.2012 for filing the statement of claim, and thereafter to both the parties on 7.5.2012 and 10.8.2012 to appear before Lok Adalat for settlement of dispute. But none of the parties appeared on the dates fixed. Since the case had lingered for more than eleven months till then, a notice was ordered to be issued by regd. post to the 2nd Party-workman *vide* order dated 20.12.2012 which was issued on 7.1.2013 fixing 31.1.2013 for filing of statement of claim and for further order. But the 2nd Party-workman failed to appear till today inspite of fixing four or five dates hereafter. Now it seems that the 2nd Party-workman is either not-interested in prosecuting his case or has settled the dispute amicably with the Management out of the court. The case cannot be allowed to linger on indefinitely and since a period of more than one and half years has expired appropriate order has to be made to dispose of the case.

3. In the given circumstances, a no-dispute award is required to be passed and accordingly a no-dispute award is passed in the case.

4. The reference is answered in the above terms.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 19 नवम्बर, 2013

**का०आ० 2618.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं० 1, नई दिल्ली के पंचाट (45/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/11/2013 को प्राप्त हुआ था।

[सं० एल-12011/35/2003-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 19th November, 2013

**S.O. 2618.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 45/2011 of the Cent.Govt.Indus.Tribunal-cum-Labour Court, No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 19/11/2013.

[No.L-12011/35/2003-IR(B-II)]

RAVI KUMAR, Section Officer

## ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
No. 1, KARKARDOOMA COURTS COMPLEX, DELHI**

I. D. No. 45/2011

1. The President,  
All India Bank Deposit Collectors' Federation,  
TKV Memorial, P.B. No. 3673,  
College P.O. Mahakavi Bharathiyar Road,  
Ernakulam-682 035 (Kerala).

2. The Organizing Secretary,  
All India Bank Deposit Collectors  
Workmen Union @ 772,  
# 1439, Renukacharya Temple Street,  
K.P. Agrahara, Mysore-570 024.

...Workmen

*Versus*

1. The Officer on Special Duty,  
Indian Banks' Association Local Chapter,  
Punjab National Bank,  
C/o P.N.B. ECE House, 2nd Floor,  
K.G.Marg, New Delhi-110 001.

2. The Chairman,  
Indian Banks' Association,  
Stadium House 6th Floor,  
Block 3, Veer Nariman Road,  
Mumbai -400 020.

...Managements

## AWARD

Daily small saving scheme, known as Pigmy Deposit, was started by Syndicate Bank in the year 1927 to inculcate habit of saving and banking amongst public with limited means and saving capacity, such as middle income group, small traders, businessmen, artisans, self-employed persons and housewives etc. Deposit collectors were engaged by the bank to visit business premises and residence of the customers to collect money. The scheme became popular and Syndicate Bank became a giant. Daily small saving schemes were started by other banks too. In various banks, the scheme was known as with names Pigmy Deposits, Adarsh deposits, Tiny Deposits, Janata Deposits, Nitya Nidhi Deposits, Laghu Bachat Yojna, Honey bees etc. Deposit collectors were authorised by the banks to collect money from the public, on which collections they were paid commission by the banks. No minimum qualification and age limit was prescribed for the deposit collectors. Deposit collectors felt that the commission, earned by them on the deposits, was too meager. They belaboured under a belief that their status should be at par with the employees of the banks. To project their grievances, the deposit

collectors organized and formed a union with the name All India Bank Deposit Collectors Federation (hereinafter referred to as the Federation). The Federation took up their cause and raised demands for redressal of their grievances. When the demands were not conceded to by the banks, where the deposit collectors were engaged, the Federation raised an industrial before the Conciliation Officer. The said dispute was referred for adjudication to the Industrial Tribunal, Hyderabad, against 11 Banks. Subsequently, a corrigendum was issued and 37 other banks were made parties to the dispute. The Industrial Tribunal, Hyderabad, passed an award on 22.12.1988 granting relief of absorption in services of the banks. Deposit collectors were granted fall back wages and incentive remuneration in case they opt not be regularized or have crossed the age of 45 years. On judicial review, relief of regularization in service of the bank(s) was set aside and grant of fall back wages and incentive remuneration was confirmed. Since 1988, prices have gone up and the deposit collectors felt that their fall back wages are not enough, they approached the Federation and the latter raised an industrial dispute for enhancement of fall back wages and incentive remuneration, available to the deposit collectors pursuant to award dated 22.12.1988. Conciliation Officer called Indian Banks Association (hereinafter referred to as the Association) for settlement of the dispute. The Association claimed that there was no privity of contract and the deposit collectors were not entitled to enhancement of fall back wages and incentive remuneration. Since conciliation proceedings ended into failure, the Conciliation Officer submitted his failure report to the appropriate Government. On consideration of failure report, so submitted, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No.L 12011/35/2003-IR(B-II), New Delhi, dated 06.08.2003, with following terms:

"Whether the demand of All India Banks Deposit Collectors' Federation for linkage of fall back wages of Rs.750.00 as determined by award dated 22.12.1988 by Industrial Tribunal, Hyderabad, which is based on Consumer Price Index at 500 points(Base 1960 = 100) to the present Consumer Price Index and their upward revision is justified? Whether the demand of All India Banks Deposit Collectors' Federation for reimbursement of conveyance expenses at revised and enhanced rate is justified? If so, what relief the said deposit collections, employed by various banks' represented by the Indian Banks' Association, are entitled to and from which date?"

2. Claim statement was filed by the Federation, pleading therein that originally Syndicate Bank evolved small deposit scheme known as Pigmy Accounts in South India through deposit collectors in 1927. Subsequently the said scheme spread to other parts of the country and was adopted by several other banks, including nationalized banks. The banks appointed deposit collectors to augment

collection of money from account holders. The Federation claims that the deposit collectors should be governed by service conditions at par with bank employees. Their demands in that regard was not considered by the banks. As such, a conflict arose between the deposit collectors and the banks relating to their service conditions. The said dispute between the deposit collectors and 11 Banks was referred by the appropriate Government for adjudication to the Industrial Tribunal, Hyderabad. Subsequently, by way of issuance of corrigendum, 37 other banks were made parties to the dispute. Terms of the dispute, which was referred for adjudication to the Industrial Tribunal were as follows:

"Whether demand of the commission agents or as the case may be, deposit collectors engaged in the banks listed in the annexure that they are entitled to pay scales, allowances and other service conditions available to regular clerical employees of those banks is justified? If not, to what relief the workmen are entitled to and from which date?"

3. Claimants involved in that dispute were called by different names, such as Pigmy Agents, NND Agents, JMD Agents, Honey Bees etc. Though they were known by different names, yet they performed same duties such as daily collection of money from small depositors by going to their houses and work places to canvass business. The deposit collectors were working with the banks for remuneration since long. The scheme of daily visits played a vital role in the growth of Syndicate Bank and large number of other banks in the country. By virtue of these deposits, Syndicate Bank grew from a pigmy to a giant. Success of Syndicate Bank made other banks to launch the scheme with stupendous expansion of their branches, after nationalization of the banks. The scheme spread all over the country. The deposit collectors have to perform duties of traveling, collection of cash daily from small depositors, do work of accounting and remittance of such collection to the banks. They have to distribute receipts of the customers. They obtain applications from the depositors alongwith their specimen signatures and deliver the same to the banks with their counter signatures. Daily collection of deposits are generally entered in daily collection statement with counter foil for each customer and each days' collection is to be deposited in the bank on the next day. Particulars, entered in small deposits daily collection statement, are prepared and totals are checked and tallied with credit vouchers prepared by the deposit collectors at the bank(s) premises. In some of the banks entries in ledger folio are also made by the deposit collectors. On receipt of weekly or monthly collection statement, entries are verified by supervisory staff. Counterfoils of weekly collection statement are filed in the bank, checked and signed by authorized officers and then handed over to the deposit collectors for distribution to the respective depositors. Cross checking was maintained by the bank to effectively



supervise and monitor the work done by the deposit collectors. The deposit collectors perform work of clerical and manual nature. Supervisory staff also used to issue directions to the deposit collectors as to in which manner they should write accounts and make collections. In some of the banks, even routes through which deposit collectors should reach their customers were advised by the supervisory staff. Many banks issue instructions to the deposit collectors not to open new accounts, which instructions were to be obeyed even against their own interest. Right to control the manner of work was vested in respective banks. Deposit collectors were required to discharge their duties diligently and honestly and expected to maintain secrecy. They used to carry identity cards issued to them by the banks. Respective bank retained the right to terminate their employment when their acts were considered prejudicial to the interest of the bank.

4. Deposit collectors mainly perform work of collection of deposits for which lower rate of interest was paid by the banks, while the money, so collected, was utilized by the banks to advance loans to customers at higher rate of interest. Thus, banks were generating income out of funds collected by the deposit collectors. Deposit collectors have no right to obtain deposits at lower rates of interest and thereby enriching themselves. Deposit collectors were separate and distinct from independent contractors. In the claim filed by the Federation before Industrial Tribunal, Hyderabad, a prayer was made that minimum wages in the region of Rs. 800.00 at 500 points in the All India Consumer Price Index for industrial workers on the basis of comparison of different wage structures in public sector undertaking may be awarded in their favour. The Federation claimed only Rs. 750.00, which was linked to 500 points without claiming any dearness allowance thereon. Incentive remuneration of 5% on deposits collected in excess of Rs. 7500.00 was also claimed. Benefits of weekly holidays, national festivals, annual leave with wages, sick leave, medical leave and retirement benefits were also claimed.

5. Industrial Tribunal, Hyderabad, answered the reference as follows:

- (i) All the deposit collectors and agents who are below the age of 45 years as on October 1980 (the date of reference to the Tribunal) shall be considered for regular absorption in the post of clerks and cashiers if they are matriculates and above, including qualified graduates and post graduates. Those who are absorbed shall be treated at par with regular clerical employees of the banks. Those who are qualified with 8th class and below matriculate shall be considered for absorption as sub staff by taking qualifying examination.
- (ii) As regards deposit collectors and agents who are above 45 years of age as on 03.01.1980 and

also those who are unwilling to be absorbed in regular bank service, they shall be paid fall back wages of Rs. 750.00 per month linked with minimum deposit of Rs. 7500.00 per month and they should be paid incentive remuneration at 2% for collection over and above Rs. 7500.00 per month and they should also be paid uniform conveyance allowance of Rs. 50 per month for deposits of less than Rs. 10,000.00 and Rs. 100 per month for deposits of more than Rs. 10,000.00 or upto or above Rs. 30,000.00 per month. They should be paid gratuity of 15 days commission for each year of service rendered.

6. Award dated 22.12.1988, passed by Industrial Tribunal, Hyderabad, was assailed by Syndicate Bank before the High Court of Andhra Pradesh. The High Court, granting writ of Syndicate Bank partly, ruled as follows:

"On conspectus of consideration, the award reached the conclusion that deposit collectors are workmen of the respective banks though they are not and also cannot claim to be regular employees. In view of the conclusion, it necessarily follows that the scheme evolved by the Tribunal in Para 69 of the award for absorption of the deposit collectors who are below 45 years of age as on 03.10.1980 has to go. But the award also directed that the deposit collectors who are above 45 years and those who are not will to be absorbed as regular employees, be paid fall back wages of Rs. 750.00 linked with minimum deposit of Rs. 7500.00 per month plus incentive remuneration at 2%. Besides such unabsorbed deposit collectors were also made entitled to conveyance allowance of Rs. 50 per month for deposit of less than Rs. 10,000.00 and Rs. 100 per month for deposits of more than Rs. 10,000 upto or above Rs. 30,000.00 per month. Besides, they were also entitled to gratuity of 15 days commission for each year of service rendered.

Now that we find that all deposit collectors are only workmen and none can be absorbed as regular employees, all of them have to be treated as only one category. The award would hence uphold and apply the decision of the Tribunal for payment of fall back wages and incentive commission as well as conveyance allowance and gratuity to the deposit collectors as workmen. The award has been modified accordingly."

7. The Association challenged the judgement dated 28.03.1997, handed down by High Court of Andhra Pradesh, by way of filing of a special leave petition before the Apex Court. The Apex Court, while disposing the said special leave petition, ruled as follows:

"We have considered the rival submissions. In our view, Shri Sharma was right when he submitted that

on the basis of evidence before it, the Tribunal has given findings to the effect that the deposit collectors are workmen within the meaning of section 2(s) of the Industrial Disputes Act, 1947. On the evidence on record, it cannot be said that the finding was unsustainable. Having been shown relevant evidence, we are also of the opinion that the Tribunal correctly arrived at a conclusion that these deposit collectors were workmen."

8. On the issue of grant of pay scales, allowances & other service conditions and on continuance of the schemes the Apex Court concluded thus:

"In the present case, not only are mode of selection and qualification not comparable but even the work is not comparable. Work which the deposit collectors perform is completely different from the work which regular employees do. There was no question of the deposit collectors being paid the same pay scales, allowances and other services conditions as regular employees of the bank.

.....

The award also showed no substance in the contention that these schemes are un-remunerative. Banks have introduced these schemes because they want to encourage common man to make small and regular deposits. As a result of such schemes, number of depositors have become much large. We have no doubt that such schemes are continuing because the banks find them remunerative. Banks have large collection through such schemes."

9. The Federation pleads that thereafter, bank managements resorted to reducing rates of commission from 3.5% to 2% for collection over and above Rs. 7500.00 per month. Bank managements also took steps to recover allegedly paid excess amount from 1997. Above steps were illegal and unwarranted. Banks have been paying 3.5% commission from 1978 to 2002 and subsequently reduced it to 2%. In fact, the Association mistook the incentive remuneration as commission. The Federation projects that incentive remuneration is part of the fall back wages for doing clerical work in the banks and the commission is for manual work done by the deposit collectors in collecting the amount. Industrial Tribunal, Hyderabad, Andhra Pradesh High Court and the Apex Court did not strike down the contract between the deposit collectors and the banks, hence banks were paying 3.5% commission for the manual work.

10. With the above background, the Federation presents that linkage of fall back wages of Rs. 750.00, determined by Industrial Tribunal, Hyderabad, *vide* award

dated 22.12.1988, which was based on consumer price index at 500 points (base 1960 = 100 points), has become totally out of date due to afflux of time and tremendous rise in prices in last 15 years. The fall back wages are required to be adjusted upwards, related to the present consumer price index. Need for upward revision of fall back wages of Rs. 750.00 per month is obvious. Fall back wages of Rs. 750.00 was linked to minimum deposit of Rs. 7500.00 per month. This linkage was based on consumer price index at 500 points. At present, consumer price index stands at 2438 points. Tenth Five year plan has projected annual growth rate of 8% in GDP as its target. Achievement of such growth rate will need higher investment accompanied by improvement in efficiency all round. For financial targets of increased investment, the country will require substantial enhanced domestic saving rate alongwith very efficient and higher absorption of saving for investment. The Federation went on to narrate that role of all commercial banks in development of country's economy and improvement in standard of living has been increasingly considered critical since beginning of planning with the series of five year plans. After nationalization of banks, number of branches of national banks which stood at 41182 in 1983 rose to 46782 in March 2003. Deposits, credits and loans extended to the customers by the banks have increased manifold. Amount of deposits, which was Rs. 50660 crores in 1983, has risen to Rs. 10,79,381 crores in March 2003. Credits, which stood at Rs. 34511 crores in 1983, has risen to 535435 crores in March 2003. Therefore, necessity of mobilizing more and more deposits, especially from the small depositors, cannot be over-emphasized. Deposit collectors can contribute to the prosperity of the banks just as any other segment of its employees working on regular basis. If the energies and capacities of the deposit collectors are properly channelized to contribute substantially to daily deposits by inducing ordinary citizens to deposit their tiny savings, it may result in becoming a big stream for the growth and development of the country. The Federation projects that in an open society demands for improvement in the basic social fabric cannot be ignored year after year unless overall savings rate is stepped up. It is, therefore, imperative to mop up the surplus funds available with the small investors by making consistent and constant efforts through deposit collectors by paying them adequate and proper amount.

11. State Governments have fixed minimum wages on upward side consistently. In order to show justification of linkage of fall back wages of the deposit collectors, with All India Consumer Price Index, the Federation details the amount of minimum wages, fixed by the Government of NCT Delhi from time to time, which is reproduced as follows:

S. No.	Date	Unskilled (p.m.) (Rs.)	Clerical (p.m.) matriculate (Rs.)
1.	16.03.1988	562	750
2.	01.02.1989	750	1014
3.	01.02.1990	767	1031
4.	01.08.1990	793	1057
5.	01.02.1991	854	1118
6.	01.08.1991	891	1155
7.	01.02.1992	958	1222
8.	01.08.1992	1009	1273
9.	01.02.1993	1078	1342
10.	01.08.1993	1119	1383
11.	01.02.1994	1382	1830
12.	01.08.1994	1420	1868
13.	01.02.1995	1495	1943
14.	01.08.1995	1545	1993
15.	01.02.1996	1677	2125
16.	01.02.1997	1784	2232
17.	01.02.1998	1937	2385
18.	01.02.1999	2348	2796
19.	01.02.2000	2419	2867
20.	01.08.2000	2524	2972
21.	01.02.2001	2579	3072
22.	01.08.2001	2592	3040
23.	01.02.2002	2667.40	3115.40
24.	01.08.2002	2679.70	3127.70
25.	01.02.2003	2783.90	3231.90

12. The Federation asserts that analysis of above data relating to minimum wages for unskilled workmen would show that in March 1988 unskilled worker was being paid Rs. 562.00 per month, which minimum wages rose to Rs. 2783.90 per month as on 01.02.2003. There has been increase of 495% from March 1988 to February 2003 for unskilled worker in Delhi. Matriculate clerk was receiving minimum wage of Rs. 750.00 per month in March 1988 which wages has been enhanced to Rs. 3231.90 per month as on 01.02.2003, which projects that there had been an increase of 415% in the wages of clerks in the period referred above.

13. The Federation demonstrates that the matter can be viewed from another angle, since there has been steep increase in consumer price index. In March 1983, consumer price index was 500 points, which has gone up to 2438 points in 2003. Thus, there had been an increase of 500% in consumer price index, which fact would justify enhancement of fall back wages paid to the deposit collectors.

14. The Apex Court had held that deposit collectors are workmen within the meaning of section 2(s) of the Industrial Disputes Act, 1947 (in short the Act). Deposit collectors are required to be compensated properly and adequately by the banks. The fact that other employees

working in the banks are paid good fair wages and capacity to pay of the banks is well known, the deposit collectors have valid claim for enhancement of fall back wages and conveyance allowance on principles of region and industry. In Crown Aluminium Works (AIR 1958 SC 30), the Apex Court ruled that no employer has right to pay less than the prescribed minimum wages, which fact is also to be borne in mind in considering the claim for enhancement of fall back wages. A sum of Rs. 750.00 fixed by Industrial Tribunal, Hyderabad, is far below even the subsistence level in the year 2003. Fall back wages cannot be below minimum wages, fixed by the State Governments from time to time. Concept of fall back wages would mean that minimum wages must be paid regardless of all other facts.

15. Some of the settlements, made in the organized sector *viz.* steel, power, transport, textiles etc., show that even a decade back workers employed in these sectors were getting Rs. 2130.00 to Rs. 2850.00 per month, besides other fringe benefits like annual increments, variable dearness allowance, house rent allowance, compensatory allowance, washing allowance, children education allowance, transport subsidy and uniforms etc. No such benefits are available to the deposit collectors.

16. Seventh Bipartite Settlement, entered into by the banking industry fixes minimum basic pay of sub staff at Rs. 2750.00 per month, besides dearness allowance, house rent allowance and city compensatory allowance. Minimum basic pay for clerical staff has been fixed at Rs. 3020.00 per month, besides above benefits. Fall back wages for deposit collectors was fixed at Rs. 750.00 per month, when an employee of clerical grade in the bank was getting basic pay of Rs. 520.00 besides above benefits. His total salary used to come around Rs. 750.00 per month. Minimum wages of workmen in various industries have gone upwards, as compared to the year 1983. There is a manifest justification for enhancement in fall back wages of atleast Rs. 5000.00 for collection of Rs. 50,000.00 per month to compensate the deposit collectors for increase in cost of living. Deposit collectors, who collect more than Rs. 50,000.00 per month, may be entitled to commission at 3.5% for an amount collected above the above Rs. 50,000.00. The Federation pleads that to avoid conflicts and industrial disputes in future, payment of fall back wages may be linked with All India Consumer Price Index. A formula for payment of dearness allowance may also be devised for the deposit collectors.

17. The Federation presents that conveyance allowance fixed by Industrial Tribunal, Hyderabad, needs enhancement upto Rs. 800.00 per month. A deposit collector is required to make repeated visits for collection of deposits and to motivate small investors to deposit in commercial banks. Conveyance allowance fixed by Industrial Tribunal, Hyderabad, was based on conditions prevalent in the year 1988. During last 15 years, there has been a phenomenal

increase in petrol prices from Rs. 9.00 per litre in 1988 to Rs. 33 per litre in February 2003. There has been a steady increase in purchase price of scooter/motor cycles. Even if one has to travel by public transport, charges have gone up phenomenally. There has been an urgent need to enhance conveyance charges from Rs. 50.00 per month upto Rs. 1,000.00, and Rs. 100.00 per month for above Rs. 10,000.00 but upto 30,000.00 to 8000.00 per month.

18. The Federation presents that deposit collectors are having fundamental right to live, which means not mere animal existence but right to live with human dignity. Meager amount of fall back wages, as referred above, denies the right to live with human dignity to the deposit collectors. It has been prayed that fall back wages may be fixed at Rs. 5000.00 per month for collection of Rs. 50,000.00 per month or 10% of the deposits collected upto Rs. 50,000.00 plus commission of 3.5 % on collection over and above Rs. 50,000.00. Deposit collectors may be awarded conveyance allowance @ Rs. 8000.00 per month and fall back wages may be linked with consumer price index, with retrospective effect. Interest may also be awarded to them on the arrears which would become due to them, besides costs.

19. All India Bank Deposit Collectors' Workmen Union (in short the Union), National Confederation of Bank Deposit Collectors, India Bank Deposit Collectors Federation and Syndicate Bank Deposit Collectors Welfare Association moved application for their impleadment as parties to the dispute. After hearing them, those applications were dismissed by the Tribunal *vide* order dated 27.09.2007. When application of the Union, seeking impleadment as party to the dispute was dismissed, the Union approached the appropriate Government. On consideration of facts presented before it, the appropriate Government was of the view that the Union represents interest of the deposit collectors and issued corrigendum on 07.10.2007, adding it to the arrays of parties to the dispute.

20. Claim statement was filed by the Union pleading that it is a trade Union registered under the Trade Union Act, 1926. The Union claims that the facts presented by the Federation in its claim statement, may be treated as part and parcel of its claim, to avoid repetition. The Union pleads that the deposit collectors canvass all types of deposits without any remuneration. They prepare cards, which show particulars of amount received from the depositors during the week. Some banks also maintain pass books and deposit collectors are required to make entries of deposits in those pass books. They visit depositors at their places of work/residence, according to convenience of the latter. They are under direct control and supervision of the bank management. Their remuneration is to be fixed on piece rate basis linked to total amount of collection made. Banks provide all records and forms to the deposit collectors for

transacting business. They are required to attend the bank at fixed times. On an average, they work for 2 hours in the bank to write daily collection statement. There are standard terms of employment for the deposit collectors. The Union also narrate facts relating to the dispute referred to the National Tribunal, Hyderabad, and award passed on 22.12.1988, besides the judgement handed down by the Andhra Pradesh High Court as well as the Apex Court over the matter. According to the Union, the banks have misread the judgement and reduced payment of commission from 3.5% to 2%.

21. The Union presents that the deposit collectors are required to be qualified to do deposit work and other clerical work. Qualified persons are recruited as deposit collectors. Collections made by the deposit collectors run into crores of rupees and the schemes are yielding good returns to the banks as compared to other deposits. The Union asserts that the banks are earning good amount of interest on the deposits collected by the deposit collectors. It has been highlighted that in the banking industry 8th Bipartite Settlement lays down wages settled for banks' employees and though deposit collectors are toiling hard for development of the banks, yet they are kept outside the purview of the bipartite settlement. This act of the bank is discriminatory. Bipartite settlements are arrived at to improve salary and other service conditions of regular employees whereas deposit collectors are neglected in toto. Payment of fall back wages and conveyance allowance, fixed by the Industrial Tribunal, Hyderabad, remained unchanged since decades without any increment.

22. The Union asserts that even part time sweepers are elevated to higher scales of pay. Part time employee working in banks upto three hours is paid consolidated pay of Rs. 750.00, while one working for more than three hours but less than six hours is paid a sum of Rs. 1050.00 per month. Deposit collectors earn meager amount in the form of fall back wages. The Union also demonstrates that consumer price index had also seen steep rise. Though deposit collectors have been declared as workmen, yet they are being discriminated in payment of salary and other service conditions as compared to regular employees. The Union claims that fall back wages with minimum of Rs. 9500 per month on minimum collection of Rs. 50,000.00 per month and upward revision as per All India Consumer Price Index may be awarded in favour of the deposit collectors. It has also been claimed that commission @ 3.5% may also be awarded for collection of over and above Rs. 50,000.00 per month. Deposit collectors may be awarded 2 litres of petrol, besides conveyance expenditure of Rs. 100.00 per day with upward revision as per All India Consumer Price Index.

23. An application under section 18(3) of the Act was moved by the Federation on 31.01.2005, pleading therein that 48 banks, enlisted below may be impleaded as parties to the dispute:



- (1) Syndicate Bank
- (2) State Bank of Hyderabad
- (3) Indian Bank
- (4) Vijaya Bank Ltd.
- (5) Vysya Bank Ltd.
- (6) Corporation Bank Ltd.
- (7) State Bank of India
- (8) Central Bank of India
- (9) Andhra Bank Ltd.
- (10) Canara Bank
- (11) Tamilnadu Bank
- (12) Allahabad Bank
- (13) Bank of Baroda
- (14) The Bank of Cochin Ltd.
- (15) Bank of India
- (16) Bank of Madura Ltd.
- (17) Bank of Maharashtra
- (18) Bank of Rajasthan Ltd.
- (19) Catholic Syrian Bank Ltd.
- (20) Dena Bank
- (21) Dhanalakshmi Bank Ltd.
- (22) Federal Bank Ltd.
- (23) Indian Overseas Bank Ltd.
- (24) Karnataka Bank
- (25) Karur Vysya Bank Ltd.
- (26) Lakshmi Commercial Bank Ltd.
- (27) Lakshmi Vilas Bank Ltd.
- (28) Lord Krishna Bank Ltd.
- (29) Mercantile Bank Ltd.
- (30) Miraj State Bank Ltd.
- (31) Nedungadi Bank Ltd.
- (32) New Bank of India
- (33) Oriental Bank of Commerce Ltd.
- (34) The Parur Central Bank Ltd.
- (35) Punjab and Sind Bank
- (36) Punjab National Bank
- (37) Sangli Bank Ltd.
- (38) The South India Bank Ltd.
- (39) State Bank of Bikaner & Jaipur
- (40) State Bank of Indore
- (41) State Bank of Mysore
- (42) State Bank of Patiala
- (43) State Bank of Saurashtra
- (44) State Bank of Travancore
- (45) Syndicate Bank
- (46) Union Bank of India
- (47) United Bank of India
- (48) United Commercial Bank

24. When scheme of the Act is construed, no express power is found to have been granted to the Tribunal to add parties to the proceedings. However, such powers are necessarily to be implied from section 18(3) (b) of the Act, wherein it has been mentioned that settlement arrived at in the course of conciliation proceedings or award shall be binding on all other parties summoned to appear in the proceedings as parties to the dispute, unless the Tribunal records opinion that they were so summoned without proper cause. Consequently, it implies that the Tribunal has powers to summon parties to the dispute.

25. On construction of the provisions of section 18(3) (b) of the Act, the Apex Court ruled time and again that the Tribunal has powers to implead a party to the dispute. Law laid by the Apex Court makes it clear that when it appears to the Tribunal that the parties to the industrial dispute, named in the reference order, does not completely or adequately represent interest either on the side of the employer or of the employee, it may direct that other persons should be joined, who would be necessary to represent such interest. When employer named in the reference order does not wholly represent interest of the employer as such, the other persons, who are interested in the undertaking of the employer, may be joined. Law to this effect was laid by the Apex Court in *Hochtief Gammon* (1964(2) LLJ 460), *Wenger & Co.* (1967(2) LLJ 403) and *National Iron and Steel Company Ltd.* (1967(2) LLJ 23). The necessary or appropriate party to the dispute referred for adjudication can be summoned at the instance of one of the parties or suo moto by the Tribunal and the award eventually would be binding on the parties so summoned, unless Tribunal records that the said party was summoned without proper cause.

26. As pointed out above, there is implied power vesting in the Tribunal to implead parties. However, the Tribunal cannot exercise that power to enlarge materially scope of reference, since its jurisdiction to deal with industrial dispute is derived solely from the order of reference, passed by the appropriate Government under section 10(1) of the Act. In the light of above legal propositions, the Tribunal was of the view that banks represent interest of the employer and granted application, *vide* order dated 19.07.2005, ordering impleadment of the aforesaid banks as parties to the dispute, except the banks mentioned below, since they ceased to exist:

- (1) The Bank of Cochin Ltd.
- (2) Bank of Madura Ltd.
- (3) Lakshmi Commercial Bank Ltd.
- (4) Mercantile Bank Ltd.
- (5) Miraj State Bank Ltd.
- (6) Nedungadi Bank Ltd.
- (7) New Bank of India
- (8) The Parur Central Bank Ltd.

27. The Association demurs the claim pleading that the Association is neither employer of the deposit collectors nor lays down terms and conditions of their engagement/service. Deposit collectors are persons engaged on the basis of individual contracts to work on commission basis. Such individual contracts are between the deposit collectors and the banks and as such on any matter or matters, which is/are part of the contract, no grievance/dispute lies against the Association. The Association appeared before the Industrial Tribunal, Hyderabad, on the basis of authority/mandate given to it by the concerned banks. No such mandate/authority is available to the Association now to appear on behalf of the banks in the present dispute and as such it cannot be named in the arrays of parties. There exists no relationship of employer and employee between the Association and the deposit collectors, engaged by the banks. The Association further presents that the Federation is not a registered trade Union of employees of the banks, hence not clothed with representative character to raise the dispute. In view of the provisions of section 2(qq) of the Act, only a Union of the workmen, registered under the Trade Union Act, 1926, can raise an industrial dispute. The Association presents that it is the duty of this Tribunal to enquire as to whether the Federation has a representative character to raise the present dispute. The Association asserts that the dispute raised by the Federation is not maintainable.

28. While giving history of the dispute, the Association projects that large number of banks in public and private sector initiated small saving schemes known as Pigmy Deposits, Adarsh Deposits, Tiny Deposits, Janata Deposits, Nitya Nidhi Deposits etc. One of the nationalized banks had started the scheme in 1927 and several others followed suit. These schemes were primarily aimed at inculcating habit of saving and banking amongst people of limited means and saving capacity such as lower and middle income groups, small traders and businessmen, artisans, self employed persons and house wives etc. As the deposits were to be collected from their doorstep, the banks deputed their authorized agents to collect money, issue receipt for it and then deposit it in the nearest branch of the bank concerned. No minimum educational qualification or age limit etc. was prescribed for deposit collectors. The schemes served socio economic need when number of banks were small and network of bank branches was not widespread, especially in rural and semi urban areas. With rapid expansion in banking and branch network, in all population areas as well as rising of cost of running schemes, importance of the schemes diminished and several banks have discontinued their schemes. The Association unfolds that currently only 26 public sector banks and 12 private sector banks are running such schemes. Several of them, on consideration of cost benefit have discontinued the expansion of the scheme, including opening of new accounts. As against this, 43 banks had the scheme when

the matter was referred for adjudication to the Industrial Tribunal, Hyderabad, in October 1980.

29. Over a period of time, deposit collectors came to be organized and claimed status of employees of the banks and benefits relating to security of tenure, minimum wages, leaves and terminal benefits akin to those available to regular employees of the banks, pleads the Association. Initially there was no fall back wages/minimum commission/wages payable to the deposit collectors, not to talk of payment of conveyance allowance and gratuity. There was no uniformity among banks in regard to terms and conditions, on which deposit collectors were engaged.

30. In October 1980, appropriate Government, finding large number of disputes between the banks and the deposit collectors pertaining to their terms of engagement, status *vis-a-vis* regular employees, working conditions and facilities, referred those issues to the Industrial Tribunal, Hyderabad, for adjudication. The Industrial Tribunal gave its award on 22.12.1988, which was assailed by the Association as well the banks by way of a writ petition before the High Court of Andhra Pradesh. The High Court gave its verdict on 28.03.1997 upholding the award in all respects, except directions to absorb the deposit collectors as clerks/sub staff, as the case may be. The banks as well as the Association challenged the verdict dated 28.03.1997 by way of filing a special leave petition before the Apex Court. The Apex Court handed down its judgement on 13.02.2001 upholding the judgement of the High Court. As laid down by the High Court and reaffirmed by the Apex Court, deposit collectors are workmen within the meaning of section 2(s) of the Act and their remuneration has been fixed with minima of Rs. 750 subject to collection of Rs. 7500.00 per month and 2% commission on collection over and above Rs.7500.00 per month. In addition, they are also eligible for conveyance allowance and gratuity. Deposit collectors had accepted the award. Uniformity of fall back wages of Rs. 750.00 on collection of Rs. 7500.00 per month, besides additional benefits in the form of conveyance allowance and gratuity, was made admissible to the deposit collectors. Uniform rate of commission of 2% on monthly collection exceeding Rs.7500.00 is also available to the deposit collectors. Their present demand for higher fall back wages and higher conveyance allowance is not justified at all. The Apex Court ruled that there was no question of the deposit collectors being paid the same pay scale, allowance and other service conditions as applicable to regular employees of the bank.

31. The Association raises objections to the reference of the dispute to this Tribunal, which objections are as follows:

- (i) The Association is neither employer of the deposit collectors nor it lays down terms and conditions of their engagement. Deposit collectors are persons engaged on the basis of individual

contracts to work on commission basis. Hence they cannot raise any grievance against the Association.

- (ii) The Association narrates that the Federation is not a registered trade Union of employees working in banks. It cannot raise an industrial dispute. It does not have representative character to espouse cause of the deposit collectors.
- (iii) In terms of sub-section (6) of section 19 of the Act, an award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any of the parties intimating its intention to terminate the award. No notice under sub-section (6) of section 19 of the Act shall have effect unless given by a party representing majority of the persons bound by the award. Since the Federation does not have a representative character, notice served by it does not satisfy provisions of sub-section (7) of section 19 of the Act. Since no effective notice of termination of the award has been served, provisions of the award continue to be operative and bars the reference.

32. The Association claims that the banks are generally incurring losses in running tiny deposit schemes. Plea raised by the Federation is contradictory since at one point of time it asserts that the remuneration of deposit collectors is fixed on piece rate basis linked to total amount of collection made and in subsequent breath it seeks upward revision in fall back wages linked to the minimum wages, notified from time to time. According to the Association, these two propositions cannot go hand in hand. The deposit collector, who work on commission basis, cannot claim revision on the basis of minimum wages. The Federation has tried to give a new meaning to incentive remuneration, different than the commission earned by the deposit collectors. Demand of the Federation for payment of wages in the region of Rs. 800 up to 500 points of all India Consumer Price index, raised before the Industrial Tribunal, Hyderabad, was not specifically linked to the demand of fall back wages on consumer price index prevailing then. This aspect was not appreciated by the Tribunal and as such said proposition was rejected.

33. Minimum wages are being revised by the State Governments under the Minimum Wages Act, 1948. Revision of fall back wages having linkage with the minimum wages is uncalled for, since banking industry has not been included in the schedule of employments under the Minimum Wages Act, 1948. On the other hand, minimum wages are fixed with reference to the minimum period of work per day, which an employee is required to render. In the case of deposit collectors, no such minimum period of work is prescribed. Fall back wages of Rs. 750.00 per month cannot be reduced on account of failure of minimum

collection of Rs. 7500.00 per month. For collection over and above Rs. 7500.00, a deposit collector is entitled for minimum commission of 2% on the amount so collected. Under the provisions of the Minimum Wages Act, 1948, an employee is not entitled to payment of any commission, which fact makes it clear that fall back wages cannot be linked with the minimum wages, fixed under the said Act.

34. The contention raised by the Federation that basic pay of sub staff and clerical staff have been revised from time to time, hence fall back wages are also to be raised upward, is without any merit and substance. Deposit collectors are categorically held to be not regular employees of the bank. Their parity with regular employees of the bank is not available. Fall back wages of Rs. 750.00 per month is fixed component of commission that came to be earned by deposit collector and there is no upper limit of such earning of deposit collectors depending upon their efforts. On the other hand, salaries payable to regular employee of the bank is fixed. An employee cannot better his remuneration depending upon his independent skill and ability to mobilize more deposits.

35. Parity claimed by the Federation with workers of steel, transport and textile sector etc. is like comparing apples to oranges, pleads the Association. The issue referred for adjudication presents a wrong assumption to the effect that the Industrial Tribunal, Hyderabad, had granted fall back wages of Rs. 750.00 on minimum deposit of Rs. 7500 based on consumer price index of 500 points (base 1962= 100). In fact the Tribunal had not ruled as such. Award dated 22.12.1988 has attained finality. The Federation is barred from raising same/similar demand. Dispute is barred by principles of *res judicata*. Claim is otherwise not maintainable on account of financial implication. Scheme introduced by the banks to inculcate habit of small saving in public at large, has lost its utility since the same has become un-remunerative and unviable.

36. The Association presents that there is no system of paying conveyance allowance separately to the deposit collectors. Transport allowance payable to regular employees of the banks in workmen category is only Rs. 65.00 per month, whereas deposit collectors are getting Rs. 50.00 to Rs. 100.00 per month. Since mode of selection and qualification for deposit collectors are not comparable with the regular employees of the banks, their demand for linkage of remuneration to consumer price index has no legal basis. While considering right to live with human dignity, financial difficulties of the institution cannot be ignored. Burden of increase should not be such as to drive the employer out of business. Deposit collectors are part time workmen and there is no prohibition on them from pursuing any other business or activities simultaneously. Lack of financial capacity of the banks would denude the deposit collectors of their demand.



37. The Association asserts that the very nomenclature of the deposit collectors, viz., commission agents, collection agents, deposit collectors etc. confirm that they are individuals working on commission. Their commission is fixed on piece rate basis linked to total amount of collection made by them. They do not perform any other work than remitting deposits collected from the public. Highlighting all these aspects, the Association claims that the deposit collectors have no right for enhancement of their fall back wages as well as conveyance allowance, awarded in their favour by the Industrial Tribunal, Hyderabad.

38. Reiterating the above facts, the Association demurs the claim made by the Union that in its award, Industrial Tribunal, Hyderabad, had gone into all aspects relating to nature of work, extent of supervision and control of the banks over the deposit collectors, when fall back wages and commission were adjudicated for them. The Tribunal, in its award dated 22.12.1988, had not given the basis on which relief of fall back wages, incentive commission, conveyance allowance and gratuity was granted to the deposit collectors. The Tribunal had not determined fall back wages taking into account the level of All India Consumer Price Index at that time. The Association presents that the Union had not made out a different case than those projected by the Federation and claim made is liable to be discarded on those very factors detailed by it in its counter. It has been pleaded that the claim put forth by the Union may be discarded, being devoid of merits.

39. Claims were also demurred by United Commercial Bank, counts of attack which are common to those made by the Association, are not reproduced again for sake of brevity. It has been pleaded that the claimants are commission agents appointed under Laghu Bachat Yojna (in short LBY) Scheme. Being LBY agents, they are not employees of the bank. Every LBY deposit costs about 7.5% of the deposits since bank pays interest rate of 5% per annum for deposits for 39 months and over above these interest 2% commission, conveyance charges of Rs. 50.00 or Rs. 100.00 and fall back amount of Rs. 750.00 for an amount upto Rs. 7500.00 to the deposit collectors. Average cost of other deposits is around 5.2%. On an average deposit of Rs. 100.00, bank incurs a loss of Rs. 1.80. The loss will increase to Rs. 4.67 on every deposit of Rs. 100.00, if the claim made by the Federation/Union is accepted. LBY deposits costs more to the bank than any other deposit. LBY agents have caused serious financial loss to the bank and as such LBY scheme had cost too much and it became absolutely unviable. Since the scheme is causing loss to the bank, serious endeavours are made to take a decision whether to continue with the scheme or not. LBY agents are freelancers with liberty to choose their working hours for canvassing deposits/collections. Fall back wages is linked with minimum deposit of Rs.7500.00 per month, hence it is not wages. Remuneration payable to the deposit

collectors cannot be fixed on the principles of industrial adjudication dealing with the demand for wage revision or allowances. Claim made by the Federation/Union is not maintainable.

40. Due to rapid commercialization and computerization, the scheme has become unremunerative. It is a matter of common knowledge that most of the banks are facing acute competition from foreign players. Banks introduce various deposit/loans schemes, besides services through automated teller machines (in short ATM), where one can withdraw and deposit cash and cheques. Banks have virtually tried to reach out to the common man. Expansion of the banking network and transactions of the customers through ATMs make it apparent that there is no need for having a regular branch/employee to carry out such transactions. The answering bank has 1753 branches as well as 111 ATMs. Bank disputes that LBY agents are entitled to parity in the matter of payment with regular employees. Claim put forth, being untenable, may be discarded.

41. Federal Bank dispels the claim statements pleading that the deposit collectors, called as honey bees in the bank, are being governed by the award passed by the Industrial Tribunal, Hyderabad, which was modified by the High Court of Andhra Pradesh and the Supreme Court of India. The bank asserts that fall back wages of Rs. 750.00 per month based on consumer price index at 500 points were fixed by the Tribunal, taking into account the submissions made by the parties. Adequacy of fall back wages was confirmed by the High Court and the Apex Court. Any revision in fall back wages would make entire scheme unviable. Fall back wages of Rs. 750.00 was linked with minimum deposit of Rs. 750.00 and an incentive remuneration of 2% on collection over and above Rs.7500.00 per month is being paid to the deposit collectors. The deposit collectors are being paid gratuity and conveyance allowance over and above the commission paid to them. Now, it is not open to deposit collectors to claim enhancement of fall back wages, after accepting the award as a package. The bank projects that it is not correct to say that conveyance allowance was fixed on conditions then prevalent in the year 1988. When conveyance allowance was also confirmed by the Apex Court, it cannot be questioned by the Federation/Union now. The bank claims that an award may be passed against the Federation/ Union.

42. The South Indian Bank Ltd. questions the claim statements pleading that out of its 432 branches spread all over the country, daily savings deposits scheme is in vogue in just 95 branches which are under rural/semi-urban segments. The deposit collectors need not to perform travelling to collect money. They perform contract assignments and are not employees of the bank. They do not perform any part of work to account the money in books of the branches. The deposit collectors collect money



from the customers and in that work they are neither supervised nor monitored by the bank officials. They discharge their duties in their own interest to earn interest and maintain confidence of the depositors. Though the bank can terminate contract agreement yet it cannot initiate any disciplinary action against the deposit collectors. The bank asserts that it is wrong to claim that the deposit collectors generate income through their collections and out of that income their remuneration is paid. Factors such as Cash Reserve Ratio, Statutory Liquidity Ratio, staff cost and operating cost are to be taken into account to consider whether bank generate any income on such collections. It is wrong to claim that the bank pays lesser interest on these collections. On the other hand, the bank pays interest on deposits based on cap fixed by Reserve Bank of India. The deposit collectors are independent contractors, who use their skill and influence to earn more commission. They perform their assignment as per their convenience. They hardly work for less than an hour. In the award, there is hardly a whisper of linkage of fall back wages with consumer price index. Claim for enhancement of fall back wages linking it with All India Consumer Price Index is uncalled for. The bank disputes that it resorted to reduce rate of commission amount from 2.5% to 2%. The deposit collectors cannot be paid salary as per time scales, applicable to bank employees.

43. The bank went on to assert that the scheme *per-se* is susceptible to fraud. The number of fraud cases in this category is higher than any other sector. Deposit collectors nowhere contribute to prosperity of the bank. Actual cost of such deposits are abnormally high and the bank is not able to service the said deposits. Cost benefit analysis, done by the bank, projects that proposition. The bank claims that for one hour work in a day on collection of Rs.10,000.00, a deposit collector would earn Rs. 902.00 and he would be able to perform other jobs too. There is no justification for enhancement of their fall back wages. It also asserts that claim for enhancement of conveyance allowance is also unfounded. They are not entitled to any relief, pleads the bank.

44. The Bank of Rajasthan Ltd. projects that there is no tiny deposit scheme in the bank and as such the dispute does not relate to them. It has been projected that when the dispute was raised before the Conciliation Officer on 30.05.2001, the bank filed its reply dated 20.11.2001 and made known that no such scheme was being run by the bank. It has been claimed that the name of the bank may be deleted from arrays of parties.

45. The Bank of Maharashtra presents that its written statement may be read in support of and in addition to the written statement filed by the Association. The submissions made by the Association may be treated as part and parcel of their written statement. The bank unfolds that it has already initiated steps to discontinue its scheme called 'Lok Mangal Deposit Scheme', since it was found

economically unviable. Circular dated 13.02.1997 has been issued directing all the branches to discontinue the scheme wherever collection is less than Rs. 50,000.00 per month. Cost benefit analysis done by the bank demonstrates that the scheme is not beneficial and viable. Cost percentage of the scheme is 9.09% whereas total benefits from the scheme comes to 8.05%. The bank is incurring heavy losses on the scheme. Frauds are also committed by the agents, which adversely affects bank's business. It has been claimed that an award may be passed against the Federation/Union.

46. The Catholic Syrian Bank disputes contents of the claim statements filed by the Federation/Union. The bank presents that the Federation/Union attempted to portray a picture that the dispute arose only due to uncompromising and rigid attitude exhibited by the banks, which assertion is not true. Out of its 314 branches spread in the country, the scheme is in existence only in 84 branches. Total number of deposit collectors engaged is only 91. The deposit collectors perform no travelling as part of their work. There is no specified time or fixed hours for performing their job. Generally they work hardly for less than an hour a day. Deposits canvassed by them forms only a small portion of the deposit of the bank. Out of a total deposit of Rs. 4184 crores as on 24.02.2006, only Rs. 111.24 crores were collected by the deposit collectors. There are no restrictions on number of assignment to be undertaken by a deposit collector. Claim for grant of minimum wages to them cannot be sustained. A deposit collector may canvass more deposit and earn more commission. Fall back wages was a new concept, introduced as a result of package scheme. There is no link of fall back wages with consumer price index figures. This scheme is a type of social service, introduced for cultivating saving habit amongst the public. The bank projects the claim statements are liable to be rejected.

47. Oriental Bank of Commerce presents that it had not introduced any tiny deposit scheme and never appointed any tiny deposit collector. A prayer was made that the name of the bank may be deleted from arrays of parties.

48. Bank of Baroda projects that on the date of reference, neither any tiny deposit scheme was in force nor any deposit collector was working with the bank. The bank does not have any dispute with any tiny deposit collector, relating to payment of fall back wages and conditions of his service. Kutumb Kalyan Nidhi Scheme, which was started by the bank stood scrapped with effect from 01.07.2002, much before the date of reference, which is 06.08.2003. Therefore, the bank is not concerned with the dispute referred for adjudication by the appropriate Government.

49. ICICI Bank also presents that Sangli Bank Ltd. was amalgamated with the bank with effect from 19.04.2007. The deposit collectors working with Sangli Bank were

compensated in terms of the award passed by Industrial Tribunal, Hyderabad, modified by the Andhra Pradesh High Court, and the Supreme Court. Payments were made to the deposit collectors in view of memorandum of understanding dated 29.10.2007 and the bank was discharged from all future liabilities in respect of the deposit collectors, who were working with the Sangli Bank. A claim has been made that the bank may be deleted from array of parties.

50. Indian Bank filed affidavit of Shri S.R. Sridhar, Chief Manager, as counter and asserts that it joins and sails with the Association and adopts all averments made by it in the written statement. The bank presents that facts pleaded there in the said written statement by the Association may be treated as facts pleaded by it, assailing the claim statement filed by the Federation/Union.

51. Allahabad Bank presents that no deposit scheme known as pigmy accounts was ever adopted by the bank. The bank had neither adopted any small deposit scheme nor engaged any deposit collector. It has been prayed that since such scheme is not adopted by the bank, its name may be deleted from the array of parties.

52. ING Vysya Bank introduced Pragati Deposits Scheme and engaged deposit collectors called as Pragati Deposit Collectors. Out of 375 branches of the bank, scheme was in vogue in only about 100 branches, which were in rural segment. The bank incurred loss of Rs. 1387.49 per Pragati Deposit Account on collection of Rs. 1811.57.59 per deposit collector for the year 2002-03, which fact emerge out of cost benefit analysis conducted by it. It has been claimed that Pragati Deposit Collectors are engaged on contract on commission. There are not entitled for enhancement of their fall back wages. Fall back wages still vary from person to person, since they collect different amounts from the customers. Fall back wages cannot be linked with consumer price index. There is no substance in the claim put forward for enhancement of fall back wages as well as conveyance allowance.

53. Laxmi Vilas Bank presents that initially pigmy deposit scheme was introduced with the name of Lakshmi Dhina Senipu, which was subsequently named as Nityha Lakshmi Deposit Scheme. Deposit collectors were engaged on individual contract, subject to periodical renewal. Earlier their commission was fixed at 3.5 % on the amount collected by them, which is paid at 2% now, as agreed by them before the High Court of Andhra Pradesh. Nature of work performed by these agents is also similar to the work performed by other agents in other banks. The bank disputes that pigmy deposits is remunerative. When rate of interest is periodically going down and cost factor had gone on higher side, the scheme is not at all economically viable. Since the commission agents are contractors, they cannot negotiate for upward revision of their commission. Their demand for linkage of their fall back wages with

consumer price index is uncalled for. The bank further presents that the deposit collectors are not entitled for enhancement of their conveyance allowance too.

54. Union Bank of India introduced Mini Deposit Salap Sanchay. The bank projects that mini deposit scheme and agents engaged for the same have not played a vital role in growth of the bank. Initially, the scheme may have been lucrative, during the early stages of banking industry, but now it has lost efficacy and became un-remunerative. As per cost benefit analysis, there is net loss of (-) 18.11% in implementation of the scheme. Bank disputes claim for revision of fall back wages and conveyance allowance put forward by the Federation/Union.

55. Syndicate Bank, which was pioneer in initiating mini deposit scheme called pigmy deposits, also presents the same stand as taken by the Association. It narrates that the pigmy deposit collectors have not played any vital role in growth of the bank. Though the scheme may have been lucrative at some point of time during earlier stages of banking industry, it has now become un-remunerative and resulted in huge expenses. The bank is facing grave competition from domestic as well as foreign players. As such, the scheme is no longer profitable. There are 2006 computerized branches, besides number of ATMs being run by the bank. Cost benefit analysis, conducted on pigmy deposit scheme, reveals that the bank has not incurred any huge profit from it. Deposit collectors discharge duties in their own interest to earn commission and to maintain confidence of the deposit collectors. There is no upper ceiling on commission earned by them since they can collect more and earn more, which is not applicable to regular employees. The bank has been making profit of Rs. 1.128 per Rs. 100.00 on an average deposit as far as pigmy deposit scheme is concerned. If demands made by the deposit collectors are accepted, the scheme would give negative return to the bank. It will become un-remunerative and would cause loss of Rs. 0.137 per Rs. 100 on average deposits. The bank presents that fall back wages were not linked to the consumer price index by Industrial Tribunal, Hyderabad. The pigmy deposit collectors, engaged on contract, are getting commission as agreed by them. Demand for fixation of fall back wages, having linkage with consumer price index, is beyond the terms of contract. When deposit collectors are not paid wages on monthly basis, provisions of Minimum Wages Act, 1948 would not come to their rescue. Comparative wages of unskilled workmen, educated clerks and rising consumer price index are not at all related to the issue referred for adjudication. Deposit collectors cannot be treated at par with regular employees for the purpose of their service conditions, as held by the Apex Court. Terms of Bipartite Settlements which fixes wages of regular employees of the bank, would not come to the rescue of the deposit collectors. Revision in fall back wages, as claimed by the Federation/Union, is excessive and beyond the terms of reference. Claim for enhancement

of conveyance allowance is also excessive and unjustifiable. The bank claims that demand raised by the Federation/Union may be discarded.

56. Deposit collectors are called as tiny deposit collectors in Central Bank of India. The bank agitates that the scheme had not played any vital role, and has lost its efficacy. Scheme has become un-remunerative and resulted in huge expenses being incurred by the bank. The bank conducted a study wherein it revealed that loss of Rs. 450.00 per Rs. 25000.00, collected by the deposit collectors, is being incurred by it. Fresh demand of the agents, if accepted, would result in loss of Rs. 1100.00 per Rs. 25000.00, collected by the deposit collectors. The bank asserts that demand for enhancement of fall back wages and conveyance allowance is uncalled for.

57. Vijaya Bank also claims that the scheme resulted into loss of 3.89% in the year 2004-05, which fact emerge out when cost benefit study was conducted. Total benefit of 8.16 per Rs. 100.00 on collection comes while total cost of such collection is found to be Rs. 12.05. These facts highlight that the scheme gives negative returns. Vijaya Bank also attempts to demolish the claim made by the Federation/Union.

58. Corporation Bank presents that on an average collection of Rs. 100.00, benefit of Rs. 8.08 accrues while cost of Rs. 15.35 is incurred. There is net loss of Rs. 7.27 on average collection of Rs. 100.00 made by the deposit collectors. The bank denounces claim put forward for enhancement of fall back wages and conveyance allowance.

59. Punjab National Bank introduced the scheme with the name mini deposit. It projects that the deposit collectors have not played any vital role in growth of the bank. The bank sounds the same defence when it pleads that many deposit collectors are engaged on contract basis, who earn commission. Their demand for linkage of fall back wages with consumer price index is beyond the terms of contract. Provisions of Minimum Wages Act, 1948, would not come to rescue of the deposit collectors. Deposit collectors cannot be treated at par with regular employees since their service conditions are different. Demand for enhancement of fall back wages, raised by the Federation/Union, is excessive. Fall back wages cannot be linked with consumer price index. Deposit collectors are not entitled to claim dearness allowance. Demand for enhancement of conveyance allowance is also excessive. Scheme is not economically viable and financial capacity of the employer bank cannot be ignored as a whole. Since deposit collectors are commission agents, their claim for enhancement of fall back wages and conveyance allowance is not sustainable.

60. Dhanvardhan Saving Deposits Scheme was introduced by Lord Krishna Bank Ltd. In the end of financial year 2005, the scheme constituted an amount equal to 0.05% of the average deposits of the bank. Cost benefit study of

the scheme highlights that there is no purpose to engage Dhanvardhan Deposit Collectors. Out of 100 branches spread all over the country, deposit collectors are engaged only in seven branches. The bank argues that demand for enhancement of fall back wages and conveyance allowance is not at all justifiable.

61. In the year 1971, Karur Vysya Bank Ltd introduced tiny deposit scheme called honey bees scheme. Deposit collectors nowhere contribute to the growth of the bank, which fact emerges out of cost benefit analysis conducted. Remuneration of deposit collectors cannot be determined on the basis of overall capacity of the bank and it should be on economics involved in the operation of such tiny deposit schemes. Collection made by the deposit collectors incurred loss of nearly 9%, which fact projects that the scheme is not at all viable. The bank presents that the demand raised by the Federation/Union for enhancement of fall back wages and conveyance allowance is not justifiable.

62. Bhagya Lakshmi Deposits was introduced by the Andhra Bank. There was net loss of Rs. 1.06 crores, Rs. 0.96 crores and of Rs. 1.61 crore to the bank in the years 2002-03, 2001-02 and 2000-01 respectively. Commission paid to deposit collectors was Rs. 1.84 crore for the year 2002-03 and Rs. 2.18 crore in the year 2000-01. The bank pleads that since the scheme is not economically viable, deposit collectors are not entitled to enhancement in fall back wages and conveyance allowance, as claimed.

63. State Bank of Patiala dispels the claim pleading that the scheme has proved to be non-remunerative. In 1997, the scheme was running in 25 branches, while in July 2006 it was being run only in 8 branches. Average yield on advances made by the bank is 8.18% p.a. Thus, the bank is incurring a loss of about 2.32% for running the scheme. The bank asserts that demand for enhancement of fall back wages is not justified. Concerning conveyance allowance, the bank pleads that regular employees of workmen category get Rs. 65.00 while the deposit collectors draw an amount varying from Rs. 50.00 to Rs. 100.00 per month. The demand for enhancement of conveyance allowance is also not justified, proclaims the bank.

64. Thrift Deposit Collection Scheme served a social need in past when number of banks were small and network of branches remained limited to rural and semi-urban areas, pleads Indian Overseas Bank. At present, the bank is incurring a loss of Rs. 3.38 for every Rs. 100.00 collected by the deposit collectors. The bank claims that demands for enhancement of fall back wages and conveyance allowance are not at all maintainable.

65. State Bank of Travancore adopts facts pleaded by the Association as well as State Bank of India in their written statements and details that there are only 18 deposit collectors in the bank. It has been contended that the scheme



is not viable and cost of collections, made by the deposit collectors, exceeds earning of the bank on such collections.

66. State Bank of Hyderabad presents that a loss of Rs. 1.78 on collection of Rs. 100.00 by the deposit collectors is incurred by the bank. Cost benefit analysis of the scheme, as made on 31.08.2005, bring it over the record that a sum of Rs. 7.89 is being earned on every Rs. 100.00 collected, while a sum of Rs.9.67 comes as a cost of collection to the bank. The bank incurred a loss of Rs. 3054218.00 on Janta Deposit Scheme, which fact highlights that the scheme is non-viable, announces the bank.

67. Mini Deposit Scheme was launched by Union Bank of India on 22.05.1974 with the object of tapping deposits of neglected sectors. The scheme causes loss to the bank. As per cost benefit analysis conducted on 31.03.2005, the bank was earning a sum of Rs.7.96 on every Rs.100.00 collected, while it was incurring a cost of Rs.19.15 on such collection. Thus the bank was incurring a loss of Rs.11.19 on ever Rs.100.00 collected by the deposit collectors. The bank asserts that the demand for enhancement of fall back wages and conveyance allowance is not at all justified.

68. Canara Bank also claims that the deposit scheme gives a negative return of Rs. 4.46 on every Rs. 100.00 collected by the deposit collectors. It has been claimed that in April 2005, there were 302629 accounts being run under the scheme, number of which account decreased to 295039 in March 2005. Average commission paid to the deposit collector was Rs. 80844.00 per year in 2003-04 which increased to Rs. 86711.00 in the year 2004-05. Operating cost was Rs. 5940009 in the year 2003-04, which has increased to Rs. 65396652 in the year 2004-05. These factors make it apparent that the scheme is not at all remunerative. The bank questions the demand for enhancement of fall back wages and conveyance allowance.

69. Dena Bank launched the scheme in 1973 in selected branches. In April 2006, there were only 31 deposit collectors engaged by the bank. For running the scheme, the bank was incurring a cost of Rs. 8.18 on every Rs. 100.00 collected by the deposit collectors, while it earned a sum of Rs. 7.37 on the amount so collected. The scheme caused a loss of Rs. 0.81 on every Rs. 100.00 collected by the deposit collectors. The bank denounces the demand for enhancement of fall back wages and conveyance allowance.

70. Honey Deposit Collectors is the name given by Karnataka Bank to the deposit collectors. The bank presents that on every Rs.100.00, collected by the deposit collectors, it earns Rs. 8.57 while it had to spend a sum of Rs. 8.86 on such collection. It has been claimed that the bank suffers a loss of Rs. 0.29 on every Rs.100.00, collected by the deposit collectors. The bank dislodges the demand for enhancement of fall back wages and conveyance allowance, since the scheme is not economically viable.

71. Janta Deposit Scheme was introduced by State Bank of Mysore. The bank earns a profit of Rs. 1.128 on every Rs. 100.00 collected by the deposit collectors. In case the demand for enhancement of fall back wages and conveyance allowance would be accepted, it would incur a loss of Rs.2.46, pleads the bank. It has been prayed that demand for enhancement of fall back wages and conveyance allowance may not be accepted.

72. Janata Deposit Scheme was introduced by State Bank of India in 1971 to mobilize deposits and inculcate saving habit amongst low income group. The bank conducted viability study of the deposits at New Delhi, Kolkatta, Patna, Thiruvananthapuram, Chennai, Chandigarh, Hyderabad, Bhopal and Lucknow circles. It was found that the scheme was not at all viable. In May/June 2001, the bank issued instructions to all concerned to discontinue the scheme and not to open new accounts or to receive additional deposit. Deposit collectors filed writ petitions in various High Courts. The bank moved a transfer petition before the Apex Court and *vide* order dated 21.10.2005, the Apex Court transferred all the writ petitions to its board. The bank pleaded that since it had taken a decision to discontinue the scheme, prior to the reference order, its name may be deleted from arrays of parties. The bank also asserts that since the scheme is not viable, demand of enhancement of fall back wages and conveyance allowance is unjustified.

73. Tamil Nadu Mercantile Bank projects that deposit collectors are paid commissions of 2.5% for 1st year of the deposit and 3% of commission on three years of deposit, besides fall back wages. Deposit collectors are not entitled for enhancement of fall back wages and conveyance allowance, pleads the bank.

74. State Bank of Bikaner and Jaipur presents that operational cost of Rs. 11.00 comes on every Rs. 100.00 collected by the deposit collectors, whereas bank earns Rs. 9.26 on that collection. Thus, the bank incurs a loss of Rs. 1.74 per Rs. 100.00, collected by the deposit collectors. According to the bank, the scheme produces negative returns. Demand for enhancement of fall back wages and conveyance allowance is uncalled for.

75. Bank of India disputes the claim projecting that it never launched any tiny deposit scheme. The bank had not engaged any deposit collector at any point of time. It was claimed that name of the bank may be deleted from arrays of parties.

76. Punjab and Sind Bank pleads that tiny deposit collection scheme was abolished by the bank long before raising of the industrial dispute. Since there are no deposit collectors engaged by the bank, its name may be deleted from the array of parties.

77. State Bank of Indore, State Bank of Saurashtra and Dhanlakshmi Bank Ltd. opted not to file any written statement.



78. In rejoinders, filed by the Federation/Union, to the written statements filed by United Commercial Bank, Federal Bank, South Indian Bank Ltd., Bank of Rajasthan Ltd., Bank of Maharashtra, Catholic Syrian Bank, Oriental Bank of Commerce, Bank of Baroda, ICICI Bank, Indian Bank, Allahabad Bank, ING Vysya Bank, Laxmi Vilas Bank, Union Bank of India, Syndicate Bank, Central Bank of India, Vijaya Bank, Corporation Bank, Punjab National Bank, Lord Krishna Bank, Karur Vysya Bank Ltd. Andhra Bank, State Bank of Patiala, Indian Overseas Bank, State Bank of Travancore, State Bank of Hyderabad, Union Bank of India, Canara Bank, Dena Bank, Karnataka Bank, State Bank of Mysore, State Bank of India, Tamil Nadu Mercantile Bank and State Bank of Bikaner and Jaipur facts pleaded in the claim statements were reiterated.

79. The case was transferred to Central Government Industrial Tribunal No. 2, New Delhi, for adjudication, by the appropriate Government *vide* its order No.Z 22019/6/2007-IR(C-II) New Delhi dated 11.02.2008. It was retransferred to this Tribunal for adjudication by the appropriate Government, *vide* order No.Z 22019/6/2007-IR(C-II), New Delhi dated 30.03.2011.

80. On pleadings of parties following issues were settled by my learned predecessor:

- (i) As per terms of reference sent by Government of India.
- (ii) Was there any privity of contract between the concerned workmen and the IBA? If not, what are consequences?
- (iii) Relief.

81. Shri I.P. Ponnusamy, Shri Ashwani Vijn and Shri Ashish Bilala were examined by the Federation to substantiate its claim. Shri Ashok Kumar and Shri A.N. Sivanand Babu were examined by the Union to establish its case. Shri K. Ganesan, Vice President of the Association, entered the witness box to detail facts to establish its defence. Shri Neeraj Gupta (Assistant General Manager, Punjab National Bank), Shri Satheesh Kumar (AGM, South Indian Bank), Shri JNS Murali (Senior Manager Vijaya Bank), Shri Kusal Pal (Senior Manager, Central Bank of India), Shri L. Makkad (Manager(P), State Bank of Bikaner and Jaipur), Shri Shyamal Kumar Singh, (Chief Manager, Indian Bank), Shri C.M Duggal, (AGM, Federal Bank) Shri Ajit Kumar Srivastava, (Manager (Law), Canara Bank), Shri Sunil Prakash, (Assistant Manager(Law) Union Bank of India), Shri Arun Kumar Tyagi (Deputy General Manager, Syndicate Bank) Shri Sudershan D. Sheth, (Chief Manager, Karnataka Bank), Shri Joginder Pal Bhagat (Chief Manager, UCO Bank), Shri Anil Kumar V(Chief Manager, State Bank of Travancore), Shri R. Venkatesh (Chief Manager, State Bank of Hyderabad) and Shri P. Venugopal (State Bank of Hyderabad) deposed facts on behalf of their respective banks. No other witness was examined by either of the parties.

82. Arguments were heard at the bar. Shri Inderjit Singh, authorized representative of the Federation, and Ms. Rashmi B. Singh, authorized representative of the Union, raised submissions on behalf of the deposit collectors. Ms. Arti Singh, authorised representative of State Bank of India, Shri Rajat Arora, authorised representative for Indian Bank Association, Bank of India, Syndicate Bank, Vijay Bank, Punjab National Bank, Canara Bank, Oriental Bank of Commerce, Punjab & Sind Bank, Federal Bank, Andhra Bank, Vysya Bank, South Indian Bank, Corporation Bank, State Bank of Bikaner & Jaipur, Central Bank of India, Lakshmi Vilas Bank, Union Bank of India, UCO Bank, Lord Krishna Bank, Tamilnadu Mercantile Bank, Union Bank of India and Indian Bank, Mr. Ravi Panwar, authorized representative for Karnataka Bank, Shri B.A. Ranganathan, authorized representative for the State Bank of Hyderabad & State Bank of Travancore, Shri Mohd. Asif, authorized representative for Bank of Mysore, Shri Sunil Prakash, authorized representative for the Union Bank of India, Shri Navin Garg, authorized representative for State Bank of Mysore, C.K. Sharma, authorized representative for Indian Overseas Bank, Shalaky Sachdeva, Law Officer for UCO Bank, Ms. Khushbu, authorized representative for ICICI Bank, Shri Javed Khan, authorized representative for Dena Bank, Shri A.K. Ansari, authorized representative for Bank of Baroda, Shri Z.A. Hashmi, authorized representative for State Bank of Patiala, Shri AN Tiwari, authorized representative for Dhanalakshmi Bank, raised their submissions to rebut claims put forth by the Federation as well as the Union. Written arguments were also filed by the parties. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

## Issue No.2

83. As record tells, appropriate Government referred the dispute for adjudication to this Tribunal, to which dispute President of the Federation and Organizing Secretary of the Union, besides Officer on Special Duty of the Association were shown as parties. In its written statement, the Association took an objection that that it is neither employer of the deposit collectors nor lays down terms and conditions of their engagement. Deposit collectors are persons engaged by the respective banks on the basis of their individual contracts to work on commission basis. Such individual contracts are between the banks and the deposit collectors and as such, on any matter or matters which is/are part of the contracts, they cannot raise any grievance against the Association.

84. Persuaded by these facts, the above issue was settled by the Tribunal. On 31.01.2005, an application under section 18(3) of the Act was moved with a prayer to implead 48 banks in arrays of parties, which application was allowed *vide* order dated 19.07.2005.

85. Whether by grant of that application, the Tribunal proceeded to enlarge the scope of the reference order? In dealing with this question, it is necessary to bear in mind, one essential fact that this Tribunal is a Tribunal of limited jurisdiction. Jurisdiction of this Tribunal is to try an industrial dispute referred to it for adjudication by the appropriate Government by an order of reference passed under section 10 of the Act. It is not open to the Tribunal to travel materially beyond the terms of reference, for it is well settled that the terms of reference determine the scope of its powers and jurisdiction from case to case. Provisions of section 10(1)(d) of the Act empower the appropriate Government to refer the dispute or any matter appearing to be connected with, or relevant to the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication. Section 10(4) of the Act provides, *inter alia*, that the jurisdiction of an Industrial Tribunal would be confined to points of dispute specified by the order of reference and adds that the said jurisdiction may take within its sweep matters incidental to the said points. In other words, where certain points of disputes have been referred to an Industrial Tribunal for adjudication, it may while dealing with the said points, deal with the matters incidental thereto, and that means that if, while dealing with such incidental matters, the Tribunal feels that some persons who are not joined to the reference should be brought before it, it may be able to make an order in that behalf under section 18(3)(b) of the Act.

86. Section 10(5) of the Act confers powers on the appropriate Government to add to the reference other establishments, groups or classes of establishments of a similar nature, if it is satisfied that these establishments are likely to be interested in, or affected by, such dispute. In other words, if an industrial dispute is referred to a Tribunal for adjudication, and in that area within the territorial jurisdiction of the appropriate Government, there are other establishments which would be affected by, or interested in, such a dispute, the appropriate Government may add them to the said reference either at the time when the reference is initially made or during the pendency of the said reference proceedings, but in every case, such additions can be made before the award is submitted. If such persons are to be added to the reference, the Industrial Tribunal may in exercise of its powers under section 18(3)(b) of the Act, summon them to appear before it.

87. Reverting to the question, the Tribunal cannot exercise powers of summoning a party to appear before it, which is implied in section 18(3)(b) of the Act, so as to materially enlarge the scope of reference. But when it appears to the Tribunal that a party, named in the order of reference, does not completely or adequately represent the interest either on the side of the employer or the side of the employee, it may direct that other person should be joined who would be necessary to represent such interest.

The test, always must be, is that the addition of the party necessary to make the adjudication itself effective and enforceable. Here in the case, banks, where deposit collectors are working, were not made parties to the dispute. Addition of the banks was necessary to make adjudication effective and enforceable. The banks, added to the dispute, are not rank outsiders or disinterested spectators. Presence of these banks was necessary to make the ultimate award effective, valid and enforceable.

88. Admittedly the banks, impleaded in the array of parties, are the employers of the deposit collectors. The Association asserts that it is neither the employer nor represents interest of the banks, in the present proceedings. The dispute, referred for adjudication, is substantially between the banks and the members of the Federation and the Union. By summoning the banks before the Tribunal, parties who represent the interest of the employer, are made to project facts essential for adjudication of the controversy. Hence, it is apparent that the Tribunal has not materially enlarged the scope of reference by summoning the banks to appear before it.

89. Record tells that *vide* order dated 19.07.2005, 40 banks were summoned to represent interest of the employer. Those banks filed their respective written statements and contested claims put forward by the Federation as well as the Union. Admittedly, the deposit collectors represented by the Federation /Union, work with those banks, who have been added as parties to the dispute. On impleadment of those banks as parties to the dispute, the issue became redundant. Accordingly, it is concluded that the issue, referred above, needs no adjudication. It is answered, accordingly.

#### Issue No.1

90. First count of attack made by the Association on claim statement, filed by the Federation, is that the dispute has not acquired status of an industrial dispute, for want of espousal. The Association pleads that the dispute, referred for adjudication, is not an industrial dispute since it has not been validly espoused by a union having representative character in the establishment of the respective banks. The Federation dispels the submission made by the Association. For an answer to this proposition, definition of the term industrial dispute is to be construed. Section 2(k) of the Act defines the term 'industrial dispute', which definition is extracted thus:

"2(k) "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

91. The definition of term "industrial dispute" referred above, can be divided into four parts, *viz.* (i) factum of

dispute, (2) parties to the dispute, viz. (a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with —(i) employment or non employment, or (ii) terms of employment, or (iii) condition of labour of any person and (4) it should relate to an "industry".

92. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute" or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of section 2 of the Act. Here in the case there cannot be any dispute to the proposition that the deposit collectors are workmen within meaning of section 2(s) of the Act.

93. The Apex Court put gloss on the definition of "industrial dispute" in *Dimakuchi Tea Estate* [1958 (2) LLJ 500] and ruled that the expression "any person" in clause (k) of section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (1) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workmen raised a dispute as against their employment, the person regarding whose employment, non employment, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non employment, terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations, made by the Apex Court, are extracted thus:

"We also agree with the expression "any person" is not co-extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in

whose employment, non employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances."

94. In *Kyas Construction Company (Pvt.) Ltd.* [1958 (2) LLJ 660], the Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression "industrial dispute" is wide enough to cater a dispute raised by the employer's workmen with regard to non employment of others, who may not be employed as workman at the relevant time. The Apex Court in *Bombay Union of Journalist* [1961 (II) LLJ 436] has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the Union of the workmen of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the Union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as Union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such Unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment, is sponsored by a Union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a Union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the Union has to be gathered from the strength of the actual number of co-workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was an employee were also members of the Union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

95. The expression "industrial dispute" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In *Raghu Nath Gopal Patvardhan* [1957(1) LLJ 27] the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it cannot



per-se be an industrial dispute but may become if it is taken up by a trade Union or a number of workmen. In *Dharampal Prem Chand* [1965 (1) LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his Union or in the absence of a Union by substantial number of workmen. Same law was laid in the case of *Indian Express Newspaper (Pvt.) Limited* [1970 (1) LLJ 132]. However in *Western India Match Company* [1970 (II) LLJ 256], the Apex Court referred the precedent in *Dimakuchi Tea Estate's case* [1958 (1) LLJ 500] and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest".

96. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an "industrial dispute", is supported by other workmen will have to be established either in the form of a resolution of the Union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general Union, at whose instance an "industrial dispute" concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an "industrial dispute". The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the Union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in *P.Somasundramaran* [1970 (1) LLJ 558].

97. It is not necessary that the sponsoring Union is a registered trade Union or a recognized trade Union. Once it is shown that a body of substantial number of workmen either acting through a Union or otherwise had sponsored the workman's cause, it is sufficient to convert it into an industrial dispute. In *Pardeep Lamp Works* [1970 (1) LLJ 507] complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new Union formed by a large number of co-workmen, if not a majority of them. Since this Union was

not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new Union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized Union does not mean that they were not "industrial dispute".

98. It is not expedient that same Union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular Union for making such a dispute an "industrial dispute", while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a member of executive or office bearer of altogether another Union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade Union. Even if a trade Union ceases to be registered trade Union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in *Gammon India Limited* [1974 (II) LLJ 34]. For ascertaining as to whether an individual dispute has acquired character of an industrial dispute, the test is whether on the date of the reference the dispute was taken up as supported by the Union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in *Western India Match Co. Ltd.* [1970 (II) LLJ 256)].

99. Now I would turn to the facts. As emerged out of affidavit Ex.WW1/A sworn by Shri I.P. Ponnusamy, dispute referred for adjudication to Industrial Tribunal, Hyderabad, was raised by the Federation only. Shri Ponnusamy deposed that the said dispute was referred by the Federation and it contested the matter right up to the Apex Court. He went on to detail that the Federation has been registered under the Trade Union Act, 1926 on 12.09.2005. During the course of cross examination, he presents that in the year 2004, there were 15000 members of the Federation. He details that the Federation has its members in 18 states. When the dispute under reference was raised, there were about 14000 deposit collectors who were members of the Federation, announces Shri Ponnusamy. He also details that the Federation resolved to raise the dispute, which fact emerged out of resolution dated 13.07.2001, passed by Central Committee of the Federation. Facts projected by Shri Ponnusamy were not at all dispelled by the Association and/or the banks who have been made parties to the dispute. Shri Ashwani Vijn gives reaffirmation to the facts unfolded



by Shri Ponnusamy. He testified that there were about 18000 to 20000 members of the Federation as on date. Therefore, these facts are sufficient to conclude that the Federation enjoys representative character in the establishment of the banks, being a union of the deposit collectors. It has also been brought over the record by Shri Ponnusamy that the Federation took decision to espouse cause of the deposit collectors and then issued notice under sub section (6) of section 19 of the Act, to terminate the award. After issuance of that notice, the Federation raised the industrial dispute. Consequently, it is crystal clear that the Federation is a representative body of the deposit collectors and had espoused their cause for adjudication. Dispute, when it was espoused by the Federation, acquired status of an industrial dispute.

100. When a dispute affects rights of the workmen as a class, it acquires character of industrial dispute, as held by the Apex Court in *India Cable Co. Ltd.* [1962(1) LLJ 409]. The word "industrial" as used to the nature of quality of dispute denotes two qualities which distinguish them from ordinary private disputes between individuals namely (i) that the dispute relates to industrial matters, and (ii) that on one side atleast of the dispute the disputant are a body of men acting collectively and not individually. In other words, 'an element of collective bargaining which is the essential feature of modern trade Union movement is necessarily involved in industrial adjudication' ruled the Apex Court in *Associated Cement Companies Ltd.* [1960(1) LLJ 491]. It is the community of interest of the class as a whole — class of employees or class of workmen—which furnishes the real nexus between the dispute and the parties to the dispute.

101. The Act is a legislation relating to what is known as 'collective bargaining' in the economic field. This policy of the legislature is also implicit in the definition of the term 'industrial dispute'. Collective bargaining being the order of the day in the democratic social welfare State, legitimate trade Union activities, which must shun all kinds of physical threats, coercion or violence, must march with a spirit of tolerance, understanding and grace in dealings on the part of the employer. Such activities can flow in healthy channel only on mutual co-operation between the employer and the employees and cannot be considered as irksome by the management in the best interest of its business. The very nature of an industrial dispute as distinguished from an individual dispute, is to obtain new industrial conditions, not merely for the specific individual then working from the specific individuals then employing them, not for the moment only, but for the class of employees from the class of employers. It is a battle by the claimants, not for themselves alone. In the light of these legal propositions, a letter addressed to the management by the Secretary of Trade Union containing a categorical assertion that the Union represented a majority of the workers of the industrial establishment, which fact was not questioned and

requesting the payment of same rate of bonus as in another similar establishment, the said letter was held to constitute a demand. The refusal of the said demand was held to be an industrial dispute. Reference can be made to the precedent in *Sri Minakshi Mills Ltd.* (3 FJR 229).

102. The workmen were not satisfied with the existing union, they formed a new union. Since the new union was not registered, they appointed five representatives but the management refused to negotiate with them on the ground that a dispute was not raised by the recognized union. The management did not even accept communications from that union. On failure of conciliation proceedings, the Conciliation Officer sent his failure report. On these facts, it was ruled that it cannot be said that there was no industrial dispute or this was only an individual dispute. It was further held that espousal by a minority union, having a membership of substantial number of workmen, would be sufficient to convert the dispute into an industrial dispute. Reference can be made to *Pradip Lamp Works* [1970(1) LLJ 507].

103. As testified by Shri Ponnusamy and Shri Vijn, there were 15000-20000 deposit collectors, who were members of the Federation. The Federation is having its members in 18 States of the Country. The Federation espoused the industrial dispute, referred for adjudication to the Industrial Tribunal, Hyderabad. The Federation made its efforts to project cause of the deposit collectors before High Court of Andhra Pradesh and the Apex Court. The Federation served a notice under sub-section (6) of section 19 of the Act to terminate the award dated 22.12.1988. Thereafter, the Federation served a notice of demand on the Association, who represented interest of the banks, while adjudication of the above dispute culminated into an award. In the present controversy too, the Federation served a notice of demand on the Association, who represents the banks while arriving at bipartite settlements, concerning service conditions of award staff of the banks. Thus, it is evident that notice of demand was served on the Association, who represents interest of the banks. The Federation acquires a representative character and expressed its collective will to espouse the cause of the deposit collectors. These facts make me to announce that the Federation is a representative body, who espoused the cause of the deposit collectors and raised an industrial dispute. The objection raised by the Association, claiming that the dispute has not acquired character of an industrial dispute, has no substance. The Federation, being a representative body, raised the dispute on behalf of the deposit collectors as a class. The collective will expressed by the Federation, while raising the dispute, gave character of an industrial dispute to the dispute, so raised. Objection raised by the Association is, therefore, brushed aside.

104. Next contention raised is that the notice, contemplated by sub-section (6) of section 19 of the Act,

was not issued by a representative body. In answer to this proposition, legal provisions are to be construed. As enacted, provisions of sub section (3) of section 19 of the Act prescribes statutory period of operation of an award. It contemplates that an award shall subject to provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable under section 17A. The maximum period of one year mentioned in sub-section (3) starts from the date on which the award becomes enforceable and does not cover the period antecedent to the award. The words 'subject to the provisions of this section', make the period of operation of the award subject to other provisions of section 19 of the Act. First proviso to sub-section (3) empowers the appropriate Government to reduce the period of an award from one year to such short period, as it may think fit. The period can be shortened by compliance of the proviso of sub-section (4) of section 19 of the Act. Second proviso to sub-section (3) empowers the Government to extend the period of operation of an award. The requirements of the proviso are:

- (i) The period must be extended before the period prescribed in sub-section (1) has expired,
- (ii) The period extended should not exceed one year at a time, and
- (iii) The total period of operation of any award should not exceed three years from the date on which the award came into operation.

105. Sub-section (6) of section 19 of the Act postulates that after expiry of the period of operation of an award, be it from one year as specified in sub-section (3) or for a reduced or extended period as contemplated in the provisos annexed thereto, it does not automatically cease to be binding on the parties. In other words, though the period of operation expires, the binding effect of the award would still survive. In order to terminate the award, the party intending to terminate it must give a notice of two months duration under sub-section (6) of section 19 of the Act to the other party or parties. Language of sub-section (6) makes it clear that even after the notice, the award continues to be binding for a further period of two months from the date on which it was given. Sub-section (7) contemplates that notice must only be given by a party representing the majority of persons bound by settlement or award, as the case may be.

106. Now, question for consideration would be as to whether notice given, under sub-section (6) of section 19 of the Act, was by a party representing the majority of persons bound by the award, made by Industrial Tribunal, Hyderabad. For an answer to this proposition, the evidence adduced by the parties is to be looked into. As deposed by Shri I.P. Ponnusamy, the Federation was registered as a trade Union on 12.09.2005. He unfolds that in the year 2005,

members of the Federation were more than 15000. Shri Ponnusamy went on to depose that in May 2011, there were 10345 members of the Federation. Shri Ponnusamy had detailed in his affidavit Ex.WW1/A that the dispute, which was referred for adjudication to the Industrial Tribunal, Hyderabad, was raised by the Federation. He projects that the Federation is the representative body. He further asserts that when the present dispute was raised, at that time, there were about 15000 deposit collectors working with the various banks, who were members of the Federation. He went on to narrate that there were about 14000 deposit collectors, who were working with various banks. The above facts remained un-assailed, when Shri Ponnusamy faced rigors of cross examination. From facts unfolded by Shri Ponnusamy, it came to light that the Federation raised the dispute, in representative capacity in the year 1980, which dispute was adjudicated by the Industrial Tribunal, Hyderabad. When notice required under sub-section (6) of section 19 of the Act was given and the present dispute was raised, there were about 15000 deposit collectors who were members of the Federation. It is crystal clear, out of facts testified by Shri Ponnusamy that the Federation represents majority of persons bound by the award, made by Industrial Tribunal, Hyderabad. The notice to terminate the award, given under sub-section (6) of section 19 of the Act, was given by the Federation, who represents majority of the deposit collectors, bound by the award of Industrial Tribunal, Hyderabad. The evidence brought over the record is sufficient to conclude that the Federation represents majority of the deposit collectors and is their representative body. The objection raised by the Association, to the effect that the notice given under sub-section (6) of section 19 of the Act was not from the party who represents majority of the deposit collectors bound by the award, is uncalled for. The objection is, accordingly, brushed aside. It is announced that a representative body served the notice under sub-section (6) of section 19 of the Act to terminate the award.

107. Next count of attack was made by the Association claiming that the award, made by Industrial Tribunal, Hyderabad, operates as res-judicata. According to Shri Arora, the Federation as well as the Union are estopped from raising any grievance against the award. For an answer to this proposition, it would be considered whether award dated 22.12.1988 would come to the rescue of the Association as well as the banks. Section 19(3) of the Act provides that an award of an Industrial adjudicator remains operating for a period of one year from the date on which it becomes enforceable. It can be terminated by any party bound by it by giving a notice as required by sub-section (6) of section 19 of the Act. An award continues to be binding on the parties only as long as it remains in operation. Therefore, there is a statutory bar to the reference of an industrial dispute, which is the subject matter of an operative award so long as a previous award is in force in

respect of a certain industrial dispute. Those disputes cannot be referred as fresh to the industrial adjudicator by merely changing the phraseology of the dispute and the tribunal will not have jurisdiction to entertain the fresh reference in respect of those matters of dispute. See *British India Corporation Ltd.* (13 FJR 352), There can be no reference while a valid award is subsisting. The Tribunal will have no jurisdiction to decide the reference. See *Bangalore WC & S Mills Ltd.* (1968(1) LLJ 555). In such cases, question of application of principles of *res judicata* does not arise.

108. It would also be expedient to note law relating to doctrine of *res-judicata*. Law laid under section 11 of the Code of Civil Procedure 1908 (in short the Code) embodies the doctrine of *res-judicata* or the rule of conclusiveness of a judgment, as to the point decided either of fact, or of law, or of fact and law, in every subsequent suit between the same parties. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. The doctrine of *res-judicata* has been explained in the simplest possible manner by Das Gupta J. in the case of *Statyadhyan Chosal* (AIR 1960 S.C. 941) in following words:

"The principle of *res-judicata* is based on the need of giving a finality to judicial decision. What it says is that once a *res judicata*, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter — whether on a question of fact or a question of law—has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceedings between the same parties to canvass the matter again".

109. It is not every matter decided in a former suit that will operate as *res judicata* in a subsequent suit. To constitute a matter as *res-judicata* under section 11 of the Code, the following conditions must be satisfied:

1. The matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue either actually or constructively in the former.
2. The former suit must have been a suit between the same parties or between parties under whom they or any of them claim.
3. Such parties must have been litigating under the same title in the former suit.
4. The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised.
5. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the former suit.

110. In *Nawab Hussain*, (1977 Lab. I.C.911), the Apex Court enunciated general principles of doctrine of *res-judicata* as under:

"The principle of estoppel per *res judicata* is a rule of evidence. As has been stated in *Marginson v. Blackburn Borough Council* [1939(2) KB 426 at P.437] it may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action." This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It, therefore, serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognize that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of *res-judicata*."

111. But there is no provision in the Act indicating as to when and under what circumstances the subject matter covered by an industrial award can be validly referred for adjudication again after termination of such award; whether an award given on a matter in controversy between the parties after its termination in terms of sub-section (6) of section 19 of the Act, after expiry of the period of one year as postulated by sub-section (3) of section 19 of the Act, would operate as *res judicata* to a subsequent reference of the same matter after adjudication or whether the Tribunal has no option when such a matter is again referred to it for adjudication but to proceed to try it *de novo*, traverse the grounds again and come to a fresh decision? These questions were addressed to by the Apex court in *Burn & Co. Ltd.* [1957(1) LLJ 226] and held that though section 11 of the Code, in term, is inapplicable to industrial adjudication, the principle underlying it expressed in the maxim "*interest rei publicae ut sit finis litium*", which is founded on sound public policy and is of universal application being a rule 'debated by a wisdom which is for all time' is applicable to the decisions of industrial adjudicator for 'good reasons'. Approving the decision of the Labour Appellate Tribunal in *Army and Navy Stores Ltd.* [1951(2) LLJ 31] and *Ford Motor Co. of India Ltd.* [1951(2) LLJ 231], the Court ruled



that it would be contrary to the well-recognized principles that a decision once rendered by competent authority as a matter in issue between the parties after a full enquiry should not be permitted to be re-agitated. It was further pointed out that if 'an adjudication loses its force when it is repudiated under section 19(6) of the Act and the whole controversy is at large, then the result would be that far from reconciling themselves to the award and settling down to work it, either party will treat it as a mere stage in the prosecution of prolonged struggle and far from bringing industrial peace, the awards would turn out to be but truces giving the parties breathing time before resuming hostile action with renewed vigour. But realizing that in a case of fixation of wage structure principles of res-judicata would not apply, the Court added that by regarding the awards of industrial adjudicators to have long terms of operations and liable to be modified by change in the circumstances on which they were based, the object of the Act would be served. Thus, it emerges that general principles of res-judicata will apply to the decisions of the industrial adjudicators but the awards, based on prevailing circumstances such as wage structure and dearness allowance etc. though normally treated to have long term operations, should be liable to be modified by change in circumstances on which they are based.

112. In *India General Navigation and Railway Co. Ltd.* [1960(1) LLJ 561], *Balmer Lawrie and Co. Ltd.* [1964(1) LLJ 380] and *Shahdara (Delhi) Saharanpur Light Railway Co. Ltd.* [1969(1) LLJ 734], the Apex Court ruled that the awards based on prevailing circumstances are liable to be modified by change in circumstances on which they were based. The Calcutta High Court in *Shankar Prasad Banerjee* [1975(1) LLJ 71] stated above principle with precision and clarity in following words:

'\*\*\*the principle of res judicata would be normally applicable to industrial adjudications or awards as industrial settlements are intended, consistent with the policy of the Industrial Disputes Act, 1947, to be operative for a fairly long period unless there is change of circumstances which may be basis of the award. In cases where the award is based on prevailing circumstances like determination of wage structure and the like on existing price index with the constant change of circumstances like spiraling of prices, the principle of res-judicata would be inappropriate and inapplicable. Such principle would however be applicable when the award is not based on prevailing circumstances but on rights claimed long existing but found by the Labour Court as non-existent and there is no scope for any change of the rights or in the claim of the workmen on the employer by reason of change of circumstances. In this state of affairs, there can be no dispute that in such cases, the principle of re- judicata would have full application.'

113. The rule that wage structure was liable to be revised only if there was a change in the circumstances, was not adhered to by the Apex Court in *Balmer Lawrie & Co. Ltd.* (supra). In that case, the Apex Court observed that the adjudicator would not normally be justified in rejecting the claim of the workmen for revision of wage scales, solely on the ground that enough time had not passed after making of the earlier award or that material change in the relevant circumstances had not been proved. These factors were not considered as justification to bar the claim for revision of wage scale. On the other hand, some other factors such as increase in the paying capacity of the employer, upward trend in the cost of living, other anomalies, mistake or errors in the earlier award, fixing the wage structure, the rise in the wage structure in comparable industries in the region, were considered as valid justification for wage revision. Regarding applications of principles of res judicata to the awards dealing with the revision of wage structure, the Apex Court ruled thus:

'While dealing with the question about the revision of wage scales, it is necessary to remember that the technical considerations of res judicata should not be allowed to hamper the discretion of industrial adjudication. It is undoubtedly true that wage scales are devised and wage structures constructed as matters of long-term policy, and so, industrial adjudication would naturally be reluctant to interfere with the wage structures without justification or in a lighthearted manner. When a wage structure is framed, all relevant factors are taken into account and normally it should remain in operation for a fairly long period; but it would be unreasonable to introduce considerations of res judicata as such, because for various reasons which constitute the special characteristics of industrial adjudication the said technical considerations would be inadmissible. As the Labour Appellate Tribunal itself has observed, the principle of gradual advance towards the living wage which industrial adjudication can never ignore, itself constitutes such a special feature of industrial adjudication that it renders the application of the technical rule of res judicata singularly inappropriate.'

114. When an award is terminated by a party under sub-section (6) of section 19 of the Act, it is no longer binding on the parties and will not, therefore bar subsequent reference for fresh wage fixation on which a fresh award is permissible on account of change in nature of industrial problems and constant spiraling of prices. Application of principle of res-judicata is in so far as claim for revision of wage structure is concerned, is inconsistent with the approach of the industrial adjudication from the minimum wage towards living wage. The industrial adjudication attempts to evolve a wage structure which may plead from subsistence level to the living wage level and cannot be



checkmated by introducing technical rules, like *res judicata* in the adjudicatory process.

115. Now attempt would be made to access as to whether the fall back wages of Rs. 750.00 per month for collection of Rs. 7500.00 by the deposit collectors, awarded by the Industrial Tribunal, Hyderabad, have any linkage with the circumstances prevailing in those days, when the above award was made. For an answer contents of the award, proved as Ex.WW1/3, are to be taken not of. As emerge out of the award, the Federation made a claim to the effect that the deposit collectors were entitled to pay scales, allowances and other service conditions, as applicable to clerical employees of the banks. Besides that demand, the Federation claimed alternative reliefs, which are reproduced below:

- (i) Fall back wages of Rs. 750.00 linked with minimum deposit of Rs. 7500.00 per month and attendance of not less than one hour at the branch each day for accounting and remittance purposes.
- (ii) Incentive remuneration @5% for collections over and above Rs. 7500.00 per month.
- (iii) Conveyance allowance of minimum of Rs. 50.00 and Rs. 100.00 for deposit of Rs. 10,000.00 and Rs. 30,000.00, Rs. 150.00 for deposit of in excess of Rs. 30,000.00 upto Rs. 50,000.00 per month.
- (iv) Paid weekly holiday and paid national festival holidays. Annual leave of one month of every 11 months of service, sick leave of one month per year.
- (v) Retirement benefits, provident fund at 10% contributory Gratuity of 15 days each year of service and pension as per bipartite settlement to clerical staff.
- (vi) Medical and hospitalization as per bipartite settlement to the clerical staff.
- (vii) Risk insurance for one lac for death and proportionate loss for bodily injury.

116. The Tribunal took note of the fact that the Federation claimed that the award may be given retrospective effect from 03.10.1980, the date when the dispute was raised. While adjudicating the dispute, the Tribunal ruled that deposit collectors were employees of the banks, which findings were reaffirmed by the Andhra Pradesh High Court and the Apex Court. Certain reliefs, claimed by the Federation, were declined. However, the Tribunal granted reliefs in favour of the deposit collectors, which are extracted thus:

- "(i) All those Deposit Collectors and agents who are below the age of 45 years as on 03.10.1980 (the date of reference to the Industrial Tribunal) shall be considered for regular absorption in the post

of clerks and cashiers if they are matriculates and above, including qualified graduates and post graduates. They may be taken to bank's service as regular employees if they pass the qualifying examination conducted by the bank. Those who are absorbed shall be treated at par with regular clerical employees of the banks. Those who are qualified with 8th class and below matriculates shall be considered for absorption as sub staff by taking qualifying examination.

- (ii) As regards Deposit Collectors and agents who are above 45 years of age as on 03.10.1980 and also those who are unwilling to be absorbed in regular bank service, they shall be paid fall back wages of Rs. 750.00 per month, linkage with minimum wages of Rs. 750.00 per month and they should be paid incentive remuneration at 2% for collection and over and above Rs. 7500.00 per month and they should also be paid uniform conveyance allowance of Rs.50 per month for deposits of less than Rs.10,000.00 and Rs.100 per month for deposits of more than Rs. 10,000.00 or upto or above Rs.30,000.00 per month. They should be paid gratuity of 15 days commission for each year or service rendered."

117. Relief of absorption in the services of the bank was declined by the High Court, when matter reached before it for judicial review. The Apex Court also reaffirmed that proposition. Therefore, award of the Tribunal granting fall back wages, incentive remuneration at 2% for collection over and above Rs.7500.00 per month and conveyance allowance was confirmed by the High Court and the Apex Court. It emerged that the Tribunal took note of the proposition relating to paying capacity of the bank, trends of cost of living and wage structure prevalent in banking industry in those days. Reference of 3rd October 1980, the date of reference, in the award would make an ordinary prudent man to say that while handing down the said award, the Industrial Tribunal, Hyderabad, took note of prevalent circumstances when it granted quantum of fall back wages and incentive remuneration, besides conveyance allowance in favour of the deposit collectors. The award, which is based on prevalent circumstances, can be modified, taking into account the spiraling rise in prices, paying capacity of the banks and prevalent wage structure paid in comparable industries in the region.

118. As noted above, the Apex Court ruled that there was no question of grant of same pay scales, allowances and other service conditions, as applicable to regular employees of the banks, to the deposit collectors. Therefore, question as to whether the deposit collectors are entitled to same scales of pay, allowances and other service conditions, as applicable to regular employees of the banks, stood determined conclusively. There is no

change in the circumstances, which were prevalent at the time when award dated 22.12.1988 was passed, relating to grant of same scale of pay, allowances and other service conditions. Therefore, question relating to grant of scales of pay at par with regular employees of the banks, allowances and other service conditions, to the deposit collectors no more remains *res integra*. Principles of *res judicata* are applicable to that adjudication. The Federation/Union cannot raise such a question, since it was conclusively adjudicated *vide* award dated 22.12.1988, which merged in the orders passed by High Court of Andhra Pradesh and the Apex Court.

119. Determination of fall back wages at Rs.750.00 on a collection of Rs.750.00 and incentive remuneration at 2% on collection over and above Rs.7500.00 per month, in award dated 22.12.1988, was based on circumstances prevalent at that time. An industrial adjudication makes gradual advances towards living wage and for that purpose takes into consideration various factors, such as: (i) conditions of wage structure prevalent in the industry, (ii) condition of wage level prevalent in the industry and the region, (iii) wage packet as a whole is sufficient to meet economic requirements of daily existence consistent with the status of the earner in the society, his responsibilities, efficiency at work and industrial peace, (iv) the position of the industry, viewed in relation to other comparable industries, (v) preemptive necessity for full neutralization of cost of living at the rock bottom of wage scale or at just above subsistence level, (vi) financial capacity of the employer, and (vii) cost of living index and consumer price index etc. These factors are only illustrative and not exhaustive. Consideration of these factors itself constitute a special feature of industrial adjudication. These factors may project that question relating to fixation of wage structure is normally based on prevalent circumstances, when such an exercise is undertaken. As noted above, award Ex. WW1/3 bring it to the light that fall back wages and incentive remuneration fixed therein were based on circumstances prevalent at that time. Therefore, it is concluded that adjudication as to fall back wages and incentive remuneration in award Ex. WW1/3 would not operate as *res judicata*. Submissions made by the Association and the banks are discarded on that count.

120. The Federation/Union claim for enhancement of fall back wages, incentive remuneration in the form of commission and conveyance allowance, paid to the deposit collector, pursuant to the award Ex. W1/3. It is apparent that the deposit collectors got fall back wages and incentive remuneration only as reward for the work done in the banks. Resultantly, it emerged over the record that the Federation/Union claim higher wage structure than those granted in their favour by the Industrial Tribunal, Hyderabad. An industrial adjudicator has to bear the following points in mind while considering higher wage structures for workmen:

- (i) Better living conditions for workmen can only be possible by giving them living wage which in turn will tend to increase the national wealth and income,
- (ii) Higher wages, nearing a living wage, would appreciably increase efficiency of workmen, by enabling them to live in fair comfort and discharge their obligations to the members of their families,
- (iii) Wage structure nearing living wage would be conducive to harmony and peace in the industry,
- (iv) Claim of social justice and the national economy to secure to workmen, a fair share of the national income, which they help to produce,
- (v) Requirements of a workman's living wages in a civilized and progressive society.

121. Since the industrial adjudication tends in favour of living wage to workmen, it becomes expedient to know the concept of minimum wage, fair wage and living wage. In *Hindustan Times Ltd.* [1963(1) LLJ 108], the Apex Court ruled that minimum wage is at the bottom of the ladder. There is minimum basic wage an employer of any industrial labour must pay in order to lead to continuance of the industry. In other words, minimum wages is lowest wage below which efficiency of workmen is likely to be impaired. The concept of minimum wage is not fixed and static, since it varies from time to time and from place to place. Tripartite Committee of Indian Labour Conference held in 1957 declared wage policy to be followed during the second five year plan, laying following norms for fixation of minimum wage:

- i. In calculating the minimum wage, the standard working class family should be taken to comprise three consumption units for one earner, the earnings of women, children and adolescents being disregarded.
- ii. Minimum food requirements should be calculated on the basis of a net intake of 2700 calories as recommended by Dr. Aykroyd for an average Indian adult of moderate activity.
- iii. Clothing requirements should be estimated on the basis of a per capita consumption of 18 yards per annum, which would give for the average worker's family of four a total of 72 yards.
- iv. In respect of housing, the minimum rent corresponding to the minimum area for houses provided under the Government's Industrial Housing Scheme should be taken into consideration in fixing the minimum wage, and
- v. Fuel, lighting and other miscellaneous items of expenditure should constitute 20 per cent of the total minimum wage.

122. In *Reptakos Brett & Co. Ltd.* (1992 Lab.I.C.289), the Apex Court adopted above factors and added factors of children education, medical requirements, minimum recreation, including festival/ceremonies and provision of old age, marriage etc., who should constitute 25% of the total, as one of the standard for fixation of minimum wage. For payment of minimum wage, capacity of employer to pay it is treated as irrelevant. However, no addition should be made to the components of minimum wage, which would bring it near the lower level of fair wage. At the same time, components of this concept must ensure for the employee not only his subsistence and that of his family, but must also preserve his efficiency as a worker. In *Kamani Metals & Alloys Ltd.* (1976(2) LLJ 55), the Apex Court ruled that minimum wage is to be paid to the workman, which is bare subsistence. Observations made by the Court are reproduced thus:

'...minimum wage which, in any event must be paid, irrespective of the extent of profits, the financial condition of the establishment or the availability of workmen on lower wages. This minimum wage is independent of the kind of industry and applies to all alike big or small. It sets the lowest limit below which wages cannot be allowed to sink in all humanity'.

123. Fair wage is something above minimum wage, 'which may roughly be said to approximate to the need based minimum in the sense of the wage which is adequate to cover normal needs of an average employee regarded as a human being in a civilized society', rules the Apex Court in *Hindustan Times Ltd.* (Supra) In *Express Newspapers (P) Ltd.* (1961(1) LLJ 339), the Apex Court described fair wages as a mean between living wage and minimum wage. Fair wage must also take note of economic reality of the situation and minimum needs of the worker having a fair sized family, with an eye to the preservation of his efficiency. In *Kamanai Metals & Alloys Ltd.* (supra), the Apex Court details the following factors for fixation of fair wage:

"A fair wage is thus related to the earning capacity and work load. It must, however, be realized that a fair wage is not a living wage, by which is meant a wage which is sufficient to provide not only essentials mentioned above, but fair measure of frugal comfort, with an ability to provide for old age and evil days. Fair wage lies between minimum wage, which must be paid in any event, and the living wage, which is the goal."

124. Living wage, according to the Committee on Fair Wages, represents higher level of wage, and naturally, it would include all amenities which a citizen living in modern civilized society is entitled to, when the economy of the country is sufficiently advanced and the employer is able to meet expanding aspirations of his workers. Economic considerations make living wage only a dream for the future.

Industrial adjudicator generally confine their horizon to the target of fixing a fair wage. In *All India Reserve Bank Employees Association* (1965(2) LLJ 175), the Apex Court remarked thus:

'... our political aim is 'living wage' though in actual practice, living wage has been an ideal which has eluded our efforts like an ever receding horizon and will so remain for some time to come. Our general wage structure is at best, reached the lower level of fair wage, though some employers are paying much higher wages than the general average.'

125. Living wage is a matter of concern and mortification that even today, the aspiration of living wage for workmen remains a mirage and a distant dream. Directive principles enshrined in the Constitution make it a duty of the State to strive and secure living wages for the working class. However, it cannot be achieved at one stroke, for the interests of the industry and its survival are as important as betterment of the standard of living of the working class.

126. For fixation of wage structure, industrial adjudicator had to take following counter balancing circumstances into account:

- (i) Unreasonable inroads into the profit of the employer may have the tendency to drive the capital away from the fruitful improvement and may prejudicially affect the capital formation.
- (ii) Wage-structure, which is beyond the financial capacity of the employer, may lead to the closure of the industry itself.
- (iii) Wage structure, being a long range plan, a long range view of the financial capacity of the industry should be taken into consideration.
- (iv) For considering increase in the wage, increase should be correlated to minimum wage, in relation to financial capacity of the industry to bear the burden.
- (v) Effect of increase on other similar industries in the region, should be taken into consideration, *i.e.* a wage structure should take into consideration on industry-cum-region basis, after giving careful consideration to the ability of the industry to pay.
- (vi) Total pay packet of the workmen, including dearness allowance, other allowance and other benefits enjoyed by them.
- (vii) Effect of rise in prices, resulting from the rise in wages, which may affect other members of the community and even prejudicially affect living conditions of the workmen themselves.
- (viii) The effect of the rise in process on the international trade of the country.

127. Now, I would turn to the facts unfolded by the witnesses, examined by the Federation/Union as well as the banks, in order to consider as to what would be the structure of fall back wage for the deposit collectors. Shri Ponnusamy unfolds in his affidavit Ex.WW1/A that minimum wages and cost of living has gone up since 1980. Rates of fall back wages, fixed by the Industrial Tribunal, Hyderabad, in award passed in the year 1988 are still continuing without any upward revision. As against this, the pay scales for regular employees of the banks have been raised ten times, as a result of bipartite settlements signed by the Association and organization of the bank employees from time to time. He went on to narrate that total pay packet of a clerk, which stood at about Rs.1228.00 per month in 1980 has now gone up to Rs.12,064.00 per month. Similarly, total pay packet of a sub staff has gone up from Rs.910.00 per month in 1980 to Rs.8821.00 per month. He details that price of petrol, so necessary for conveyance of a deposit collector, which was hardly a few rupees per litre in 1980 is currently selling at over Rs.50.00 per litre. He presents that conveyance allowance, paid to deposit collectors, has remained static at Rs.50.00 or Rs.100.00 per month. During the course of his cross-examination, above facts remained un-assailed since the witness was not confronted by the banks on those propositions. The banks put their cost benefit analysis to the witness to portraiture that the scheme is not remunerative, which documents were disputed by the witness.

128. Shri Ashwani Vijn detailed in his affidavit Ex.WW2/A that consumer price index (base 1960=100) has since crossed 4400 points. Despite rise of consumer price index fall back wages, commission and conveyance charges fixed by Industrial Tribunal, Hyderabad, *vide* its award dated 22.12.1988, have totally become out of date with current reality of life and need urgent upward revision. He has also produced a chart showing rise in petrol, kerosene, diesel and LPG prices since April 1989 till July 2009, with a view to substantiate his claim for revision of conveyance allowance, paid to the deposit collectors. It would not be out of place to mention that these facts were not at all assailed by the Association as well as the banks, when testimony of Shri Vijn was purified by an ordeal of cross-examination.

129. Shri Ashish Bilala swears facts in his affidavit Ex.WW3/A to the effect that banking industry is not one of the sweated industries. Bank employees can reasonably expect and demand payment of fair wages. He further narrates that the Association and the banks do not claim that they are running into losses. He claims that as per his information, banks are making good profit and declaring dividends. He quantifies profits, earned by some of the public sector banks during the year 2005-06 and 2006-07, as follows:

S. No.	Name of Banks	2005-06 (rupees in crores)	2006-07 (rupees in crores)
1	Allahabad Bank	Rs.706.13 crore	Rs.750.14 crore
2	Andhra Bank	Rs.485.50 crore	Rs.537.60 crore
3	Bank of India	Rs.701.44 crore	Rs.1123.17 crore
4	Bank of Maharashtra	Rs.50.79 crore	Rs.271.84 crore
5	Canara Bank	Rs.1343.22 crore	Rs.1420.81 crore
6	Central Bank of India	Rs.257.42 crore	Rs.498.01 crore
7	Corporation Bank	Rs.4444.46 crore	Rs.536014 crore
8	Dena Bank	Rs.72.99 crore	Rs.201.56 crore
9	Indian Bank	Rs.504.48 crore	Rs.759.77 crore
10	Indian Overseas bank	Rs.783.34 crore	Rs.1006.43 crore
11	Oriental Bank of Commerce	Rs.557.16 crore	Rs.580.81 crore
12	Punjab & Sind Bank	Rs.108.33 crore	Rs.218.53 crore
13	Punjab National Bank	Rs.1439.31 crore	Rs.1540.08 crore

130. Rate of compensation for the deposit collectors remained static and in fact had gone down since it was fixed by the Industrial Tribunal, Hyderabad, in 1988, announces Shri Bilala. He details that most of the banks have reduced the commission paid to deposit collectors from 3.5% to 2%, after judgment was handed down by the Apex Court. Reduction of rate of commission had caused hardship to deposit collectors, when prices are going up and they are required to maintain the same living standards for their family and children.

131. Shri Ashok Kumar claims in his affidavit Ex.WW4/A that revision in salary of regular employees of the banks had been ten times since 1980, which fact clearly establishes financial capacity of the banks to pay more to the deposit collectors. Though the prices have touched the sky, yet the deposit collectors are getting same fall back wages and incentive remuneration, which were awarded by the Industrial Tribunal, Hyderabad. Travelling allowance at actual rate is demanded by the deposit collectors since price of petrol has gone up from Rs.13 per liter in 1980 to Rs.75 per litre as on date. 4216 pigmy deposit collectors were working in 1587 branches of Syndicate Bank as on 31.03.2011. Pigmy deposit balance has been increased from Rs.1195.64 crores to Rs.2656.28 crores from 31.03.2001 to 31.03.2011, which information was obtained by him under Right to Information Act, 2005, details Shri Kumar.

132. Shri A.N. Shivanand Babu brings figures on record relating to cost of living in Bengaluru, Delhi, Mumbai, Kolkata and Chennai, through documents Ex.WW5/1 to Ex.WW5. He also details that scale wages of regular employees of the banks have been enhanced from time to time, with a view to project that cost of living has gone up. At the cost of repetition, it is pointed out that the above facts, testified by these witnesses have not been



questioned at all when these witnesses faced rigors of cross-examination.

133. Shri K. Ganeshan, Vice President of the Association, swears in his affidavit Ex.MW1/A that daily small saving schemes known as Pigmy Deposit, Tiny Deposit, Janta Deposit, Nithya Deposit etc. were primarily aimed to inculcate habit of saving and banking amongst public with limited means and saving capacity. With the expansion of banks and branch network in all population areas as well as rise in cost of running such schemes, the importance of such schemes has diminished and several banks have discontinued the scheme. No new deposit collectors is being engaged by the public/private sector banks, since the schemes are not profitable at all. He details that at present only 22 banks are having small deposit collection schemes, while in 1980 the scheme was in operation in about 43 banks. With the increase in the banking business, banking branches as well as in technology, the demand for such deposit schemes have diminished. Placing cost benefit analysis, conducted by the Indian Bank, Tamil Nadu Mercantile Bank Ltd, Punjab National Bank, Vijaya Bank, Andhra Bank and UCO bank on record, the witness asserts that such schemes have become non-remunerative. During the course of his cross examination, he concedes that the banks, where deposit collectors are engaged, are making profits and declaring dividends. He also admits that cost of living is increasing day by day, since 1988. He announces that in the year 2007, there were 10274 deposit collectors working with various banks. According to him, deposit collectors may be getting less than the minimum wages notified for an unskilled worker. He further admits that object of small deposit schemes still subsists. He admits that Ex.MW1/W1 to Ex.MW1/W4 are annual reports of four banks while Ex.MW1/W5 is half yearly report of Punjab National Bank.

134. Shri Neeraj Gupta unfolds in affidavit Ex.MW2/A that a small deposit scheme was introduced by Punjab National Bank in 1978. As on date, there are 162 deposit collectors working for the bank and the scheme has not remained profitable at all. With the increase of banking business, banking branches and computerization of the bank, the scheme no longer remains remunerative. During the course of cross-examination, he admits that the bank is making profit and had not incurred any loss during the last 4-5 years. He further admits that in third quarter of the year 2011, the bank had earned profit of Rs.1150 crores and in earlier nine months, it had earned a profit of Rs.3460 crores.

135. Shri S. Satheesh Kumar unfolds in his affidavit Ex.MW3/1A that South Indian Bank introduced small deposit saving scheme in the year 1965, which was primarily aimed at inculcating habit of saving and banking amongst people with limited means and saving capacity. He narrates that with the expansion of bank and branch network as well as rising cost of running such schemes, importance of

the scheme has diminished. Out of its 675 branches, bank has the scheme only in 71 branches. Total balance outstanding under the scheme as on 31.03.2011 was Rs.15.68 crores, out of which bank had to keep Rs.0.94 crore as cash reserve ratio and Rs.3.76 crore as statutory liquidity ratio. Average income on amount kept as statutory liquidity ratio is 7%, which comes to total of 0.26 crore. Bank can only lend balance amount of Rs.10.98 crore, on which average yield would be 10.90%. Thus income from the above advances would be Rs.1.20 crore. On the other hand, total cost of collection on scheme comes to Rs.1.59 crores. Break up of Rs 1.59 crore is interest on deposit @4.86% (Rs.0.76 crore), commission paid to the deposit collectors (Rs.0.56 crore,) staff cost of Rs.0.18 crore and operating cost of Rs.0.09 crore. Thus bank's cost is more than the benefit by Rs.0.13 crores. This scheme floated by the bank is not profitable at all. During the course of his cross-examination, he showed ignorance as to whether bank earns profit on saving bank accounts or not.

136. Shri T.N.S. Murali deposed that small deposit saving scheme was introduced by Vijaya Bank around 1970, which scheme has lost its utility. When the scheme was introduced, the bank had only 126 branches, which has now gone up to 12467 branches, 44 extension counters and 6889 ATMs. The scheme is not at all profitable, as projected in cost benefit analysis, Ex.MW4/1. During the course of cross examination, he admits that 580 deposit collectors are working with the bank. He further admits that the bank is earning profit. Bank charges interest from 4% to 22% on its advances. However, he could not explain on what type of advances 4% interest is charged by the bank. He admits that Ex.MW4/1 has not been certified by auditors of the bank.

137. Shri Kushal Pal announces that Central Mini Deposit Scheme was introduced by Central Bank of India in 1978, which is not profitable at all at this juncture. There were about 1970 branches when the scheme was introduced but at present the bank has about 4000 branches, 178 extension counters and more than 1500 ATMs. At present there are 410 deposit collectors working with the bank. Cost benefit analysis Ex.MW6/1 projects that the scheme is not economically viable. However, he admits that EX.MW5/1 has not been certified by auditors of the bank. Bank has been earning profits since the last many years, admits Shri Pal.

138. Shri M.L. Makkad deposes that State Bank of Bikaner and Jaipur introduced small deposit scheme in the year 1975, which is now not at all profitable. There were about 363 branches of the bank when the scheme was introduced. At present, the bank has 921 branches and large number of ATMs. On account of expansion of business of the bank, the scheme has lost its utility. He admits that cost benefit analysis, which is Ex.MW6/1, has not been certified by the auditors of the bank. Bank had been earning profits, deposes Shri Makkad.

139. Shri Shyamal Sinha swears in his affidavit Ex. MW7/A that Indian Bank reintroduced small deposit scheme in 1993. At that time, bank had about 1253 branches. Now there are 1932 branches of the bank, besides 1235 ATMs. At present, there are 100 deposit collectors working with the bank. Due to increase in banking business, expansion of bank branches, advancement in technology in banking sector, demand for such deposit scheme is not there. The scheme is not at all viable. He admits that in cost benefit analysis, proved as Ex. MW7/1, staff cost represented cost incurred on the staff who is supposed to maintain record in respect of collections made by the deposit collectors. He further admits that the bank is earning profit.

140. Shri C.M. Duggal presents that Federal Bank introduced the scheme in 1970s, which is not at all economically viable as on date. The bank has 950 branches, besides 1030 ATMs. Utility of the scheme has diminished since there are 35 deposit collectors working with the bank. He admits that the bank is making profits. He further admits that a sum of Rs.9237211.00 earmarked towards gratuity for the financial year 2010-11 has not been invested by the bank for any purpose.

141. Shri Ajit Kumar Srivastava deposes that Canara Bank introduced small deposit scheme, known as New Nitya Nidhi Deposit Scheme. The scheme has lost its utility. When the scheme was introduced there were less than 2000 branches of the bank. However, at present, the bank has 3569 branches besides 2666 ATMs. Cost benefit analysis projects that the scheme is not at all economically viable. He admits that cost benefit analysis Ex. MW9/1 has not been authenticated by auditors of the bank. He further admits that the bank is earning profits.

142. Shri Sunil Prakash presents that Union Bank of India introduced the scheme in 1980s. At that time, there were about 1000 branches, which has increased upto 3200, besides more than 3000 ATMs. In the year 2005, the bank had only 127 deposit collectors working with it. He concedes that cost benefit analysis, proved as Ex. MW10/1, has not been authenticated by the auditors of the bank. He makes a candid admission that the bank earns profits.

143. Shri Arun Kumar Tyagi declares that pigmy deposit scheme was introduced by Syndicate Bank in 1928, which was modified in the year 2007. According to him, there were 2493 branches of the bank as on 31.03.2011, out of which 1587 branches are having pigmy deposit accounts. There are 34216 deposit collectors as on 31.03.2011. In case demand made by the Federation/Union relating to enhancement of fall back wages and conveyance allowance would be accepted, the scheme would not remain profitable for the bank. He admits that after reference of the dispute to this Tribunal for adjudication, the bank had engaged 1300 new deposit collectors. He also does not dispute that the bank earns profits. He admits that cost benefit analysis,

proved as Ex. MW11/1, has not been authenticated by the auditors of the bank.

144. Shri Sudershan D. Sheth presents that honey deposit scheme, introduced by Karnataka Bank is causing loss of Rs. 0.29 per Rs.100.00 collected by the deposit collectors. A sum of Rs. 93,43,97,447.00 was collected by the deposit collectors in the financial year 2010-11, on which commission of Rs.1,87,65,780.00 was paid. There were 170 deposit collectors as on 31.03.2011. He admits that cost benefit analysis, proved as Ex. MW12/12 and Ex. MW12/3, are not certified by auditors of the bank. According to him from 2005 to 2011, there is small increase in earning of the bank from the scheme but the increase is not continuous.

145. Shri Joginder Pal Bhagat announced that Laghu Bachat Yojna Deposits was introduced by UCO bank in the year 1977. At that time, there were 1005 branches of the bank, which has gone upto 23890 besides 864 ATMs. At present, 458 deposit collectors are working with the bank. The scheme no more remained profitable. He concedes that the bank is earning profits. He also admits that cost benefit analysis, proved as Ex. MW13/1, has not been certified by auditors of the bank.

146. Shri Anil Kumar V. deposes that State Bank of Travancore does not find the scheme remunerative. State Bank of India discontinued the scheme in the year 2001 due to heavy losses and loss of popularity of the scheme. Andhra Bank, State Bank of Patiala and Canara Bank etc. have also discontinued the scheme. However, he admits that the bank is earning profit consistently. He further admits that the cost benefit analysis, proved as Ex. MW14/1, has not been prepared by auditors of the bank.

147. Shri R. Venkatesh details that State Bank of Mysore does not find the scheme lucrative any more. The bank is suffering losses from the scheme. However, during the course of cross examination, he admits that the profit of the bank has not gone down during the last 4-5 years. Cost benefit analysis, proved as Ex. MN15/2 and Ex. MW15/3, are not prepared by auditors of the bank.

148. Shri P. Venugopal of State Bank of Hyderabad deposes that janata deposit scheme was introduced by the bank in 1977. In the year 2005, the scheme was found not at all commercially feasible. Cost benefit analysis as on 01.04.2005 as well as 01.04.2011 project that scheme is causing loss to the bank. Vide circular dated 06.02.2010, the bank sought to discontinue the scheme. The bank was dragged into litigation on that count by the Federation. The bank took final decision on 20.02.2010 that the scheme is not at all viable. Services of the deposit collectors were discontinued with effect from 22.01.2012. The bank is out of pocket, while retaining these deposit collectors. During the course of his cross examination, he concedes that profits of the bank had not gone down during the last 4-5 years. Cost benefit analysis was not done by the bank to

assess financial viability of the award staff and officers of the bank.

149. When facts unfolded by Shri Ponnusamy, Shri Ashwini Vijn, Shri Bilala, Shri Ashok Kumar and Shri A.N. Shivanand Babu are scanned, it came to light that rates of fall back wages fixed by Industrial Tribunal, Hyderabad, *vide* award dated 22.12.1988, still continues without any upward revision. Award Ex. WW1/3 passed by Industrial Tribunal, Hyderabad, fixes fall back wages of Rs.750.00 on collection of Rs.7500.00, besides incentive remuneration of 2% for collection of over and above Rs.7500.00 per month. Witness examined by and on behalf of the Federation /Union project that the fall back wage, fixed by the Industrial Tribunal, Hyderabad, are inadequate as cost of living has gone up. The witnesses portrait a picture that it had become very difficult for deposit collectors to provide bare subsistence of life, not to talk of preservation of their efficiency and measures of education, medical requirements and other amenities to their family members. S/Shri K. Ganeshah, Neeraj Gupta, S. Satheesh Kumar, Shri TNS Murali, Kushal Pal, M.L. Makkad, Shyamal Singh, C.M. Duggal, Ajit Kumar Srivastava, Arun Kumar Tyagi, Sudarshan D. Sheth, Joginder Pal Bhagat, Anil Kumar V. and R. Venkatesh nowhere dispute that the fall back wages and incentive remuneration, admissible to deposit collectors on collection of over and above Rs.7500.00 per month, is too meager to enable the deposit collectors to

cover their bare physical needs and keep themselves just above starvation. Therefore, facts highlighted by the above witnesses bring it over the record that the fall back wages and incentive remuneration, admissible to the deposit collectors, do not constitute an amount sufficient to meet bare subsistence for them as well as their family members. There has been a complete agreement on the proposition amongst witnesses examined by the Association and the banks that the money packet, which reaches hands of the deposit collectors, is not sufficient for their bare subsistence and their family members. It does not include any expenses necessary for their other primary needs such as medical expenses, expenses to meet some education for their children, minimum recreation, provision for old age and in some cases transport charges etc. One can say that with the amount which a deposit collectors earns in a month, a standard family cannot embark to live a life above subsistence level. I have every reason to conclude that the fall back wages and incentive remuneration admissible to the deposit collectors, even does not meet the standards on which minimum wages are fixed by the State Government for a workman, from time to time.

150. What are the minimum wages for an employee of skilled category? For an answer, areawise rates of minimum wages notified for scheduled employment in central sphere, are to be taken note of. Below mentioned rates of minimum wages were notified as on 01.04 2013:

Name of Scheduled Employment	Category of Worker	Rates of wages including V.D.A. per day (in Rs.)		
		Area A	Area B	Area C
1. Agriculture	Unskilled	195.00	177.00	175.00
	Semi-Skilled Supervisory	213.00	197.00	180.00
	Skilled/Clerical	232.00	213.00	196.00
	Highly Skilled	258.00	238.00	213.00
2. Workers engaged in Stone Mines for Stone Breaking and Stone Crushing	1. Excavation & removal of over burden with 50 meters lead/1.5 meters lift:			
	(a) Soft Soil		198.11	
	(b) Soft Soil with Rock		299.63	
	(c) Rock		397.26	
	2. Removal and Staking of rejected stones with 50 metres lead 1.5 metres lift			
			158.10	
	Stone breaking or Stone Crushing for the stone size			
	(a) 1.0 inch to 1.5 Inches		1232.87	
	(b) Above 1.5 Inches to 3.0 Inches		1053.41	
	(c) Above 3.0 Inches to 5 Inches		615.89	
	(d) Above 5.0 Inches		505.66	
3. Sweeping and Cleaning	Unskilled	297.00	246.00	198.00
4. Watch and Ward	Without Arms	328.00	279.00	231.00
	With arms	361.00	328.00	279.00
5. Loading and Unloading	Unskilled	297.00	246.00	198.00

Name of Scheduled Employment	Category of Worker	Rates of wages including V.D.A. per day (in Rs.)		
		Area A	Area B	Area C
6. Construction	Unskilled	297.00	246.00	198.00
	Semi-Skilled Supervisory	328.00	279.00	231.00
	Skilled/Clerical	361.00	328.00	279.00
	Highly Skilled	393.00	361.00	328.00
7. Non-Coal Mines		Above Ground	Below Ground	
	Unskilled	198.00	246.00	
	Semi-Skilled Supervisory	246.00	297.00	
	Skilled/Clerical	297.00	345.00	
	Highly Skilled	345.00	393.00	

Name of Scheduled Employment

Nomenclature

1. Agriculture	Agriculture
2. Workers engaged in Stone Mines for Stone Breaking and Stone Crushing	Workers engaged in Stone Mines for Stone Breaking and Stone Crushing
3. Sweeping and Cleaning	Employment of Sweeping and Cleaning excluding Activities prohibited under the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993
4. Watch and Ward	Employment of Watch and Ward
5. Loading and Unloading	Employment in Loading and Unloading in (i) Goods Sheds, Parcel Offices of Railways; (ii) Other Goods sheds, Godowns, Warehouses etc. and; (iii) Docks and Ports
6. Construction	Construction or maintenance of Roads or Runways or in Building Operations including laying down Underground Electric, Wireless, Radio, Television, Telephone, Telegraph and Overseas Communication Cables and similar other Underground Cabling Work, Electric Lines, Water Supply Lines and Sewerage Pipe Lines
7. Non-Coal Mines	Employees engaged in the employment of Gypsum, Barytes, Bauxite, Manganese, China Clay, Kyanite, Copper, Clay, Magnesite, White Clay, Stone, Steatite (including the mines producing Soap Stones and Talc), Orchre, Asbestos, Fire Clay, Chromite, Quartzite, Quartz, Silica, Graphite, Felspar, Laterite, Dolomite, Red Oxide, Wolfram, Iron Ore, Granite, Rock Phosphate, Hematite, Marble and Calcite, Uranium, Mica, Lignite, Grave, Slate and Magnetite Mines

151. Following chart details cities classified as Area 'A', Area 'B' and Area 'C' for the purposes of minimum wages, referred above:

#### AREA—"A"

Ahmedabad	(UA)	Hyderabad	(UA)	Faridabad complex	
Bangaluru	(UA)	Kanpur	(UA)	Ghaziabad	(UA)
Kolkata	(UA)	Lucknow	(UA)	Gurgaon	
Delhi	(UA)	Chennai	(UA)	Noida	
Greater Mumbai	(UA)	Nagpur	(UA)	Secundrabad	
Navi Mumbai	(UA)				



**AREA — "B"**

Agra	(UA)	Jodhpur	Jabalpur	(UA)
Ajmer		Kochi	Jaipur	(UA)
Aligarh		Kolhapur	Jalandhar	(UA)
Allahabad	(UA)	Kozhikode	Jamshedpur	(UA)
Amravati		Kota	Puducherry	(UA)
Aurangabad	(UA)	Ludhiana	Jalandhar-cantt.	(UA)
Bareilly	(UA)	Madurai	Dhanbad	(UA)
Bhavnagar	(UA)	Meerut	Dehradun	(UA)
Bikaner		Moradabad	Durg-Bhilai Nagar	(UA)
Bhopal	(UA)	Mysore	Jammu	(UA)
Bhubaneshwar	(UA)	Nasik	Jamnagar	(UA)
Amritsar	(UA)	Pune	Vijayawada	(UA)
Chandigarh	(UA)	Patna	Vishakhapatnam	(UA)
Coimbatore	(UA)	Raipur	Warangal	
Cuttack	(UA)	Rajkot	Mangalore	(UA)
Durgapur	(UA)	Ranchi	Salem	(UA)
Gorakhpur	(UA)	Sholapur	Tiruppur	(UA)
Guwahati	(UA)	Srinagar	Tiruchirappalli	(UA)
Guntur		Surat	Asansol	(UA)
Gwalior	(UA)	Thiruvananthapuram	Belgaum	(UA)
Indore	(UA)	Vadodara	Bhiwandi	(UA)
Hubli-Dharwad		Varanasi		

**AREA 'C'** will comprise all areas not mentioned in this list. **NB :** U.A. stands for Urban Agglomeration.

152. Minimum rates of wages notified by Government of NCT Delhi in various scheduled employments as on 01.04.2013, are as follows:

S. No.	Scheduled employment	Category of Workers	Basic Minimum wages	VDA	Total Wages
1	Agriculture	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
2	Automobile Engineering, including Servicing and Repair work of Automobiles	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
3	Bakery, Confectionery, Dairy products, Food preservation etc.	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
4	Brick Kiln Industry	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
5	Cement Working Establishments	Unskilled	203.00	0.00	203.00

S. No.	Scheduled employment	Category of Workers	Basic Minimum wages	VDA	Total Wages
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
6	Chemicals	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
7	Clubs	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
8	Construction and maintenance of roads or in building operation	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
9	Dal and Flour mills	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
10	Delhi Transport Corporation	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
11	Foundries with or without machine shop	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
12	Private hospitals and nursing homes not carried on by Government or local Authorities	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
13	Ice Factories and Cold Storage	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
14	Local authorities	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
15	Laundries, Laundry services, Cleaning and Dyeing Plants, i.e. Factories/shops	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
16	Metal working establishments other than Foundries and Automobile Engineering Workshop	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
17	Oil Mills	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
18	Plastic, Rubber including Cable industries	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
19	Pottery industries	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
20	Printing Press	Unskilled	203.00	0.00	203.00

S. No.	Scheduled employment	Category of Workers	Basic Minimum wages	VDA	Total Wages
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
21	Private unrecognized Teaching Institutions	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
22	Public Motor Transport	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
23	Readymade Garments	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
24	All Shops and other Establishments (Covered by Delhi shops and Estt. Act, 1954)	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
25	Stone Breaking/Stone crushing	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
26	Textile Industry, including Hosiery Handloom, Niwar, Thread Ball Mfg. Name Label, Dyeing, printing of Textile	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
27	Manufacturing of Radio and Television including sound producing and recording, Equipment including tape recorders, electric apparatus, appliances & their accessories	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
28	All registered factories not covered by the employment at item nos.1 to 26	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00
29	Work Working establishments including saw mills	Unskilled	203.00	0.00	203.00
		Semi-skilled	225.00	0.00	225.00
		Skilled	248.00	0.00	248.00

153. Unskilled, semi skilled and skilled employees would get following rates of wages in all scheduled employment in Delhi, except employment in shops and clubs, as on 01.04.2013:

Category	Rates as on 01.10.2012	Dearness Allowance (pm) wef 01.04.2013	Rates from (Rs.) 01.04.2013	
	Rupees	Rupees	Per month	Per day
Unskilled	7254.00	468.00	7722.00	297.00
Semi Skilled	8008.00	520.00	8528.00	328.00
Skilled	8814.00	572.00	9386.00	361.00

154. Following are minimum rates of wages notified by the Government of NCT of Delhi for (i) employment in Shops and Establishments (ii) in clubs, as applicable on 01.04.2013:

Category	Rates as on 01.10.2012  Rupees	Dearness Allowance (pm) wef 01.04.2013  Rupees	Rates from (Rs.) 01.04.2013	
			Per month	Per day
Unskilled	(i) 7254.00	468.00	(i) 7722.00	(i) 297.00
	(ii) 7098.00		(ii) 7566.00	(ii) 291.00
	(iii) 6396.00		(iii) 6864.00	(iii) 264.00
	(iv) 6292.00		(iv) 6760.00	(iv) 260.00
Semi skilled	(i) 8008.00	520.00	(i) 8528.00	(i) 328.00
	(ii) 7852.00		(ii) 8372.00	(ii) 322.00
	(iii) 7046.00		(iii) 7566.00	(iii) 291.00
	(iv) 6942.00		(iv) 7462.00	(iv) 287.00
Skilled	(i) 8814.00	572.00	(i) 9386.00	(i) 361.00
	(ii) 8632.00		(ii) 9204.00	(ii) 354.00
	(iii) 7774.00		(iii) 8346.00	(iii) 321.00
	(iv) 7644.00		(iv) 8216.00	(iv) 316.00

155. To ascertain quantum of fall back wages for the deposit collectors, it would be expedient to know the category of employment in which deposit collectors fall. The deposit collectors are held to be workmen, a class in themselves. Whether they fit in any category of employees, who serve the banks? For an answer, the Tribunal has to note the categories of employees, employed by the banks. Shastri Award classifies employees of the bank in the following categories: (a) permanent employees; (b) probationers; (c) temporary employees; and (d) part-time employees. The employees of the above categories have been defined to mean as:

- "permanent employee" means an employee who has been appointed as such by the bank,
- "probationer" means an employee who is provisionally employed to fill a permanent vacancy or post and has not been made permanent or confirmed in service,
- "temporary employee" means an employee who has been appointed for a limited period for work which is of an essentially temporary nature, or who is employed temporarily as an additional employee in connection with a temporary increase in work of a permanent nature,
- "part-time employee" means an employee who does not or is not required to work for the full period for which an employee is ordinarily required to work and who is paid on the basis that he is or may be engaged in doing work elsewhere.

156. As is evident, the banks employ part time employees. It is not a matter of dispute that the deposit collectors are workmen within the meaning of section 2(s) of the Act, who are not awarded scales of wages applicable to the employees of the banks. They are a special class in themselves. Neither they are classified as part time employees nor permanent employees. However, for the purpose of assessment of their fall back wages and incentive remunerations it would be taken note of as to what quantum of wages a part time employee gets from the banks. 9th Bipartite Settlement, signed on wage revision, pension and other service conditions between the Association and their workmen represented by their various Unions on 27.04.2010, details wages paid to a part time employee. Clause 21 of the said settlement provides as follows:

"In substitution of Clause 21 of the Bipartite Settlement dated 2nd June 2005, with effect from 1st November 2007, Part-Time employees who are members of the subordinate staff on consolidated wages and whose normal working hours per week are 'upto 3 hours' and 'more than 3 hours but less than 6 hours' shall be paid one third scale wages w.e.f. 1st May, 2010. From 1st November, 2007 to 30th April, 2010, they shall be paid consolidated wages as under:

- Upto 3 hours : at bank's discretion with a minimum of Rs.10301- p.m.
- More than 3 hours but less than 6 hours : at bank's discretion with minimum of Rs.1140/- p.m.



The employees recruited on or after 1st May, 2010 in part-time:scale wages shall be at minimum of one-third scale wages.

157. Scales of pay for clerical staff and subordinate staff, settled under 9th bipartite settlement, are reproduced below:

(a) In supersession of Clause 4 of Bipartite Settlement dated 2nd June, 2005, with effect from 1st November, 2007 the scales of pay shall be as under:—

Clerical Staff												
6200	$\frac{400}{3}$	7400	$\frac{500}{3}$	8900	$\frac{600}{4}$	11300	$\frac{700}{7}$	16200	$\frac{1300}{1}$	17500	$\frac{800}{1}$	18300 (20 years)
Subordinate Staff												
5500	$\frac{200}{4}$	6300	$\frac{250}{5}$	7550	$\frac{300}{4}$	8750	$\frac{350}{3}$	9800	$\frac{400}{3}$	11000	(20 years)	

(b) With effect from 1st May, 2010 the scales of pay shall be as under:

Clerical Staff												
7200	$\frac{400}{3}$	8400	$\frac{500}{3}$	9900	$\frac{600}{4}$	12300	$\frac{700}{7}$	17200	$\frac{1300}{1}$	18500	$\frac{800}{1}$	19300 (20 years)
Subordinate Staff												
5850	$\frac{200}{4}$	6650	$\frac{250}{5}$	7900	$\frac{300}{4}$	9100	$\frac{350}{3}$	10150	$\frac{400}{3}$	11350	(20 years)	

158. Deposit collectors perform clerical duties, since they collect deposits from the account holders, issue receipts to them and account for the money so collected to the banks. Though deposit collectors are not part-time employees, but assuming them to be so, then they would get 1/3 of scale wages of the clerical staff, besides an amount equivalent to the other benefits paid to such employees. Their basic fall back wages would be Rs.2400.00 per month, besides other allowances admissible as per rules. On that standard, fall back wages packet of the deposit collectors shall be approximately Rs.5000.00 per month.

159. As emerge out of award Ex. WW1/3, deposit collectors get fall back wages of Rs.750.00 on a collection of Rs.7500.00 per month. On collection over and above Rs.7500.00 per month, they get incentive remuneration of 2%. Assuming that Rs.3 lac per month is collected by a deposit collector, his fall back wages and incentive remuneration would be Rs.6600.00 [Rs.750.00 (fall back wages) plus Rs.5850.00(incentive remuneration)]. Thus, it is obvious that a deposit collector is getting less than the minimum wages, notified from time to time and even less than a deemed part time clerical staff.

160. Deposit collectors argue that fall back wage fixed by the Industrial Tribunal, Hyderabad, was based on All India Consumer Price Index at 500 points (base 1960=100 points). According to them, All India Consumer Price Index had scaled too high and while fixing their fall back wages, it should be linked with consumer price index, prevalent as on date. This contention has been negated by and on behalf of the banks. It has been argued on behalf of the

banks that the fall back wages, fixed by Industrial Tribunal, Hyderabad, had no linkage with All India Consumer Price Index.

161. In order to appreciate submissions of the respective parties, the Tribunal is under an obligation to scan the award Ex.WW1/3. When I went through the award Ex.WW1/3, it came to light that the main thrust of the Tribunal has been as to whether the deposit collectors were commission agents or employees of the banks. The Tribunal steered through the arguments of the parties and concluded that the deposit collectors were really employees of the banks. This conclusion of the Tribunal was approved by High Court of Andhra Pradesh and reaffirmed by the Apex Court. However, they were treated a class in themselves, which was not eligible for grant of scale pay and other benefits. The Tribunal passed the award, directing the banks to absorb the deposit collectors in their employment. This command of the Tribunal was turned down by the High Court and the Apex Court. Thus, it is evident that relief of regularization, granted in favour of deposit collectors by the Industrial Tribunal, Hyderabad, was drift away on judicial review.

162. The Tribunal noted alternative relief claimed by the Federation, as under:

- (i) Fall back wages of Rs.750.00 linked with minimum deposit of Rs.7500.00 per month and attendance of not less than one hour at the branch each day for accounting and remittance purposes.

- (ii) Incentive remuneration @5% for collections over and above Rs.7500.00 per month.
- (iii) Conveyance allowance of minimum of Rs.50.00 and Rs.100.00 for deposit of Rs.10,000.00 and Rs.30,000.00, Rs.150.00 for deposit of in excess of Rs.30,000.00 upto Rs.50,000.00 per month.
- (iv) Paid weekly holiday and paid national festival holidays. Annual leave of one month of every 11 months of service, sick leave of one month per year.
- (v) Retirement benefits, provident fund at 10%, contributory Gratuity of 15 days each year of service and pension as per bipartite settlement to clerical staff.
- (vi) Medical and hospitalization as per bipartite settlement to the clerical staff.
- (vii) Risk insurance for one lac for death and proportionate loss or bodily injury.

163. While dealing with the above alternative reliefs, the Tribunal projected its thoughts in following words:

"... I feel that they should be paid a fall back wages of Rs.750.00 per month, linked with minimum collection of Rs.7500.00 per month and they should be paid incentive remuneration at 2% for collection over and above Rs.7500.00 per month and they should also be paid uniform conveyance allowance of Rs.50 per month for deposits of less than Rs.10,000.00 and Rs.100 per month for deposits of more than Rs.10,000.00 or upto or above Rs.30,000.00 per month."

164. In respect of the other demands, then fixation of fall back wages and incentive remuneration, the Tribunal ruled as follows:

"The deposit collectors or agents are not entitled to weekly holidays, national and festival holidays, annual leave and sick leave as claimed by them. They were virtually enjoying those things by virtue of the bank not functioning on weekly holidays and paid national and festival holidays. They were also entitled to enjoy leave according to their own choice after intimating the bank. As regards the retirement benefit, I feel that they cannot claim any provident fund or pension but they should be paid gratuity of 15 days commission for each year of service rendered. They are not entitled to medical and hospitalization charges and risk insurance as regular employees. They would be entitled to such benefits only after they are regularly absorbed in the banks service."

165. Except the above treatment to alternative reliefs of the Federation, the Tribunal nowhere linked relief of fall back wages and incentive remuneration to All India

Consumer Price Index. As detailed above, the Tribunal had not linked fall back wages and incentive remuneration to be paid to the deposit collectors to All India Consumer Price Index. When High Court of Andhra Pradesh exercised powers of judicial review, none of the parties raised the issue to the effect that fall back wages and incentive remuneration were linked to All India Consumer Price Index. Therefore, there was no occasion for the High Court to consider as to whether fall back wages and incentive remuneration were linked with All India Consumer Price Index or not. The Apex Court too was not invited to delve the issue that fall back wages and incentive remuneration, awarded in favour of the deposit collectors, were linked to All India Consumer Price Index. In the reference order, the appropriate Government tried to project that the fall back wages and incentive remuneration, granted in favour of the deposit collectors, have linkage with All India Consumer Price Index. However, the mist created therein in the reference order melts away when award dated 22.12.1988 and findings of the Andhra Pradesh High Court and the Apex Court, while making judicial review, are noted. Resultantly, it is concluded that fall back wages and incentive remuneration awarded to the deposit collectors, have no linkage with All India Consumer Price Index.

166. As noted above, a deposit collector is paid fall back wages of Rs.750.00 on a collection of Rs.7500.00 per month, besides incentive remuneration of 2% on collection over and above Rs.7500.00 per month. In case a deposit collector collects a sum of Rs.3 lacs per month, he gets only a sum of Rs.6600.00 (Rs.750.00 as fall back wages plus Rs.5850.00 as incentive remuneration). Collection of a sum of Rs.3 lacs per month is moderate amount but fall back wages and incentive remuneration, which would come in the hands of a deposit collector would be less than minimum rates of wages, notified for a matriculate clerk. Evidently, fall back wages and incentive remuneration are not part of wage structure in technical sense, but nomenclature of fall back wages and incentive remuneration, given to wage packet of a deposit collector, would not denude this Tribunal of its obligation to fix a pay packet co-relative to minimum wages, notified from time to time. Therefore, the Tribunal would proceed ahead to devise a wage structure in the form of fall back wage and incentive remuneration for the deposit collectors, which should not be less than the minimum wages, so notified from time to time.

167. It is well established that an employer has the right to organize or reorganize his business in any fashion he likes for the purpose of convenience or better administration for achieving economy, productivity or profitability, subject, however, to the limitation that in doing so he does not contravene any regulatory or other law and acts bonafide. If an employer thus remaining within the four corners of law and acting bonafide organizes or reorganizes his business, an industrial adjudicator will have no jurisdiction to interfere with his policy. However, an

industrial adjudication may involve the extension of an existing agreement or the making of a new one or in general creation of new obligations or modifications of old ones, by laying down new industrial policy for industrial peace, which ordinarily a civil court cannot do. In *Bombay Labour Union case* [1966(1) LLJ 417], the Apex Court ruled:

"It is too late in the day now to stress the absolute freedom of an employer to impose any condition which he likes on labour. It is always open to industrial adjudication to consider the conditions of employment of labour and to vary them if it is found necessary, unless the employer can justify an extraordinary condition \*\*\*\*\* by reasons, which carry conviction."

168. The terms and conditions of a contract between the employer and an employee can be interfered with by a tribunal only when it is found necessary in the interest of social justice or exigencies of the situation. The tribunal cannot indiscriminately interfere with the contracts. In other words, the jurisdiction of the tribunal is hedged in by the requirements of social justice. Reference can be made to the precedent in *Orissa Cement Ltd.* [1960(2) LLJ 91]. While discharging this duty, the Tribunal should not lose sight of the interest of the industry. Any settlement of a dispute ignoring the interest of the industry is likely to have far reaching and detrimental effect on the workmen itself. Reference can be made to the precedent in *Assam Chah Karamchari Sangha* [1956(1) LLJ 157].

169. An industry cannot be compelled to run its venture in losses. Formulae, devised for fixation of minimum wages for the deposit collectors in subsequent sections, would highlight that their fall back wages and incentive remuneration have been linked with a moderate amount of collection, per different areas where deposit collectors operate, which they are required to collect. It has been so done with a view to maintain interest of the banks in the schemes. Efforts to fix fall back wages within the range of fair wage would have persuaded the Tribunal to fix minima of collection amount at some higher level, which would have been a little bit difficult to achieve. Therefore, efforts to evolve rates of fall back wages and incentive remuneration at rates sufficiently higher than the minimum wages were not made since achievement of that standard of collection would have been a dream for a deposit collector to achieve. Without a target for collection, fixation of wage structure for the deposit collectors, adequate to cover normal needs of an average employee, would have constrained the banks to close the schemes.

170. When an industrial adjudicator is called upon to devise a wage structure for industrial employees, he is under an obligation to carefully examine financial capacity of the employer. In a bid to project non-viability of small deposit schemes, the banks came out with arguments that these schemes led them to losses. *Shri K. Ganeshan*

attempted to prove cost benefit analysis of small deposit schemes prepared by Indian Bank, Tamil Nadu Mercantile Bank Ltd., Punjab National Bank, Vijaya Bank, Andhra Bank and UCO Bank. In the same manner, *Shri Neeraj Gupta* brought cost benefit analysis of Punjab National Bank over the record to reaffirm that the scheme is non-remunerative. *S/Shri K.S. Satheesh Kumar, T.N.S. Murali, Kushal Pal, M.L. Makkad, C.M. Duggal, Ajit Kumar Srivastava, Sunil Prakash, Arun Kumar Tyagi, Sudarshan D Sheth, Joginder Pal Bhagat, Anil Kumar V., R. Venkatesh and P. Venugopal* attempt to prove cost benefit analysis in respect of South Indian Bank, Vijaya Bank, Central Bank of India, State Bank of Bikaner and Jaipur, Indian Bank, Federal Bank, Canara Bank, Union Bank of India, Syndicate Bank, Karnataka Bank Ltd., UCO Bank, State Bank of Travancore, State Bank of Mysore and State Bank of Hyderabad respectively to establish that small deposit schemes are not remunerative at all. When facts unfolded by these witnesses were purified on anvil of cross examination, the witnesses admitted that cost benefit analysis were not certified by auditors of the bank. Out of facts admitted by them, it came over the record that some one got these documents prepared with a view to project that the schemes were not remunerative. However, no efforts were made to get these documents certified from the auditors, who put their hands on statements of profit and loss accounts of the banks. It is emerging over the record that these documents are not a result of genuine exercise made by and on behalf of the banks to project economic viability of the schemes.

171. The witnesses, examined on behalf of the Association as well as the banks, made candid admission that the banks are earning profits from last many years. Now efforts would be made to ascertain as to whether the schemes are non-remunerative. In order to ascertain profit or loss of banking business, one has to take into account as to what is the base rate determined by a particular bank which projects cost of the bank per Rs.100.00, available for advances to be made to public at large. In assessing its base rate, a bank takes into account the interest rate on saving bank accounts, current accounts, salary paid to its employees, rent of buildings, maintenance expenses, soft loans granted to employees, depreciation cost of assets, cost of upgradation of technology, cost of non performing assets, loans on Government schemes, education loans, interest paid on term deposits and miscellaneous expenses. The bank had to keep money out of its total funds towards 'cash reserve ratio and 'statutory liquidity ratio'. As on date, cash reserve ratio is 6.7% and statutory liquidity ratio is approximately 24.5%. Thus, as a whole, a bank had to keep about 30% of its total funds towards C.R.R and S.L.R. and only 70% of its funds can be given in advances to run banking business.

172. As on date, base rate of State Bank of India, Syndicate Bank, Punjab National Bank, Canara Bank, Dena Bank, Karnataka Bank Ltd., Indian Overseas Bank,

Andhra Bank, Bank of India, Union Bank, State Bank of Mysore and UCO Bank are 9.8%, 10.5%, 10.25%, 9.95%, 10.25%, 10.85%, 10.25%, 10.25%, 10.25%, 10.25%, 10.15% and 10.20% respectively. From above figures, it can be said that mean base rate of the banks may be taken at 10%. While coming to the above base rate, we had taken into account salary component paid to the employees, besides 2% commission paid to the deposit collectors. On an average, bank spends 3% to 4% on salaries paid to its employees. Component of salary paid to employees and commission paid to the deposit collectors, if deducted then base rate of the banks come to 5%. A bank loads 4% to 5% as risk profile on its base rate and then grants advances to the general public. If these facts are gauged with these standards then bank advances money to the public at 14% to 15% per annum, while its base rate on money collected by the deposit collectors would come to 5% only. Thus, out of Rs.100.00 collected per month by a deposit collector, the bank advances 70% to the general public, keeping 30% towards C.R.R. and S.L.R. Out of Rs.70.00 so advanced per month, the bank earns Rs.63.70 in a year while it pays a commission of Rs.13.00 to a deposit collector and spends Rs.32.50 in maintenance of its infrastructure as referred above. Thus, banks earn a sum of Rs.18.20 in a year on Rs.100.00 collected per month by the deposit collectors, besides interest on the amount kept under S.L.R., for many a times the banks deposit Government securities, which securities earn interest. Thus, it emerges over the record that small deposit schemes have been wrongly termed as non-remunerative by the banks. While preparing cost benefit analysis, proved by the aforesaid witnesses, above factors were not taken into account. Therefore, those documents are found to be non-genuine, besides the fact that the same were not authenticated by the auditors of the banks.

173. One may advance arguments that when these schemes are remunerative, what led various banks to close down such schemes. As highlighted by the witnesses, examined on behalf of the Association as well as the banks, pigmy deposit scheme was started by Syndicate Bank in 1927 in southern parts of the country. The scheme was primarily aimed at inculcating habit of saving and banking among people with limited means and saving capacity. Persons of lower and middle income group, small traders, businessmen, artisans, self-employed persons and housewives etc. were brought within the reach of the scheme. Syndicate bank grew a giant out of the funds collected by the deposit collectors. The scheme attracted other banks too, where it was initiated when those banks were having small number of its branches in semi-urban and rural areas of the country. With the expansion of the banking industry, branches of the bank increased manifold, with opening of branches in semi-urban and rural segments. Computerization and use of latest technology made the banks to reach out to the public without assistance of their employees or the deposit collectors. When banking

business expanded, such schemes became secondary and the person sitting at the helm of affairs in banking industry took steps to cut such schemes to size. In some of the banks, the scheme has been closed but such a decision, a policy decision, was taken on other consideration, besides economic factors. The schemes were initiated by the banks through its policy decisions and could be closed after taking a policy decision in that regard. The Apex Court affirmed the decision of State Bank of India in respect of closure of its scheme, *vide* its order dated 28.02.2008 passed on transfer case(civil) No.79 of 2005 titled as A.P. Bank Deposit Collector Association *vs.* State Bank of India. Thus, it is clear that the banks are free to close its scheme if it is not economically viable. But, in case banks opt to continue with the scheme, they cannot be allowed to pay fall back wages and incentive remuneration which are less than the minimum wages notified from time to time. An industry has to pay minimum wages to its employees. As referred above, the deposit collectors are workmen, a class in themselves, who had a right to receive minimum wage in the form of fall back wages and incentive remuneration.

174. For fixation of rates of wages, an industrial adjudicator has to scan financial capacity of the industry to pay such rates of wages. The capacity of the industry to pay means, one of the following things:

- (a) the financial capacity of all the industries in the country to pay;
- (b) the financial capacity of a particular industry as a whole to pay;
- (c) the financial capacity of an employer to pay; or
- (d) financial capacity of a particular unit of establishment (marginal, representative or average) to pay.

175. Financial capacity of all the industries in the whole country to pay would project an enigma for an industrial adjudicator to measure capacity of each of the units of the industry. He would gauge on an industry-cum-region basis after taking a fair cross section of that industry. In a given case, it may be even permissible to divide the industry into appropriate classes and then deal with the capacity of the industry to pay class-wise, ruled the Apex Court in *Express Newspaper (P) Ltd.*(1961(1) LLJ 339). However, in the case under reference, all the banks, where small deposit schemes are being run, were summoned to present facts before the Tribunal. In their depositions, witnesses referred above, have testified that the banks are earning profits from the last many years. The Tribunal has been supplied with a document known as charter of demands, served by National Organization of Bank Workers on the Association for signing of 10th Bipartite Settlement. In the said charter of demands, historical comparison of productivity of banking industry have been



presented. The comparison of productivity presents financial capacity of banking industry as a whole. For convenience, the said comparison, made by the aforesaid National Organization of Bank Workers, is reproduced thus:

As on	Deposits Rs Crore	Advances Rs Crore	Business Rs Crore	Business at 1960 prices	Total Staff	AICPI avg 1960=100	PEB	PEB at 1960 prices
19/07/69	4469	3196	7665	4380	188536	175	4.07	2.32
31/12/79	29554	19333	48887	13968	475840	350	10.27	2.94
31/12/82	52507	36503	89010	18739	646016	475	13.78	2.90
31/12/83	61557	41842	103399	19436	692676	532	14.93	2.81
31/03/92	233753	143036	376789	34920	863909	1079	43.61	4.04
31/03/93	263254	153880	417134	35172	871846	1186	47.84	4.03
31/03/98	531840	259729	791569	43927	874000	1802	90.57	5.03
31/03/99	737281	354071	1091352	53081	873569	2056	124.93	6.08
31/03/00	859462	414989	1274451	60423	797331	2109	159.84	7.58
31/03/01	968623	480118	1448741	66160	757020	2190	191.37	8.74
31/03/02	1079394	549351	1628745	71304	755437	2284	215.60	9.44
31/03/03	1079167	548436	1627603	68530	757251	2375	214.94	9.05
31/03/04	1229463	633036	1862499	75507	752627	2467	247.47	10.03
31/03/05	1435853	854671	2290524	89434	748711	2561	305.93	11.95
31/03/06	2002528	1367770	3370298	126036	700100	2674	481.40	18.00
31/03/07	1994199	1440147	3434346	120367	728878	2853	471.18	16.51
31/03/08	2453867	1797505	4251372	140303	714793	3030	594.77	19.63
31/03/09	3112748	2260156	5372904	162522	717761	3306	748.56	22.64
31/03/10	3524352	2562817	6087169	163858	760475	3715	800.44	21.55
31/03/11	4191963	3147335	7339298	178878	773694	4103	948.60	23.12
31/03/12	4791251	3697154	8488405	190869	794042	4447	1069.01	24.04

176. Comparison of pay scales, granted in favour of award staff of banking industry as a whole, would show upward revision of pay packet in favour of such employees. Chart below mentioned would make the position explicit about financial capacity of banking industry, as a whole.

Bipartite	II	III	I	V	VI	VII	VIII	IX	Rise through BPS	
From	Jan-70	Sep-78	Jul-83	Nov-87	Nov-92	Nov-97	Nov-02	Nov-07	III BPS to	II BPS to
CPI	100	200	332	600	1148	1684	2288	2836	IX BPS	IXBPS
Sign.	Oct-70	Aug-79	Sep-84	Apr-89	Feb-95	Mar-00	Jun-05	Apr-10		
<b>Officer Scale (I to VII)</b>										
From		Apr-77	Feb-84	Nov-87	Nov-92	Apr-98	Nov-02	Nov-07		
CPI		200	332	600	1148	1684	2288	2836	1418%	2836%
Sign		Jul-79	Sep-84	Apr-89	Feb-95	Dec-00	Jun-05	Apr-10		
I-III Start		700	1175	2100	4250	7100	10000	14500	2071%	
I-III St 11		1150	1825	3300	6670	10500	14880	20900	1817%	
I-III End		2200	3250	5200	10200	15760	23520	35100	1595%	
IV-VII Start		2000	3050	4780	8970	13900	20480	30600	1530%	
IV-VII St 11		3000	4100	6100	11750	18080	27300	42000	1400%	
IV-VII End		3500	4600	7000	14000	21300	32600	52000	1486%	
Clerk Start	170	325	520	900	1820	3020	4410	6200	1908%	3647%

Bipartite	II	III	I	V	VI	VII	VIII	X	Rise through BPS	
Clerk St 11	325	620	990	1810	3620	5720	8440	12000	1935%	3692%
Clerk End	550	1160	1850	3220	6560	10880	16570	23900	2060%	4345%
SS Start	116	245	430	815	1665	2750	4060	5500	2245%	4741%
SS St 11	151	330	580	1120	2285	3650	5460	7850	2379%	5199%
SS End	200	495	850	1670	3610	5850	9180	13800	2788%	6900%
<b>Above Scales at 1960 prices</b>										
I-III Start		350	354	350	370	422	437	511	146%	
I-III St 11		575	550	550	581	624	650	737	128%	
I-III End		1100	979	867	889	936	1028	1238	113%	
IV-VII Start		1000	919	797	781	825	895	1079	108%	
IV-VII St 11		1500	1235	1017	1024	1074	1193	1481	99%	
IV-VII End		1750	1386	1167	1220	1265	1425	1834	105%	
Clerk Start	170	163	157	150	159	179	193	219	135%	129%
Clerk St 11	325	310	298	302	315	340	369	423	136%	130%
Clerk End	550	580	557	537	571	646	724	843	145%	153%
SS Start	116	123	130	136	145	163	177	194	158%	167%
SS St 11	151	165	175	187	199	217	239	277	168%	183%
SS End	200	248	256	278	314	347	401	487	197%	243%
<b>GM end to SS start</b>		14.29	10.70	8.59	8.41	7.75	8.03	9.45		

175. Expansion of banking business has gone manifold, as emerge out of the table below:

Rs. In crores

YEAR	DEPOSITS (Rs.)	ADVANCES (Rs.)	TOTAL BUSINESS (Rs.)
31.03.2007	19,35,000	13,87,000	33,22,000
31.03.2008	23,80,000	17,15,000	40,95,000
31.03.2009	30,00,000	21,56,000	51,56,000
31.03.2010	35,24,000	25,63,000	60,87,000
31.03.2011	41,93,000	31,38,000	73,31,000
31.03.2012	47,90,000	36,97,000	84,87,000

178. Business of the banks has increased and increase in profit per employee basis has been depicted in the following table:

YEAR	BUSINESS PER EMPLOYEE	PROFIT PER EMPLOYEE
31.03.2008	594 LACS	3.7 LACS
31.03.2009	734 LACS	4.7 LACS
31.03.2010	864 LACS	5.3 LACS
31.03.2011	1017 LACS	5.9 LACS
31.03.2012	1151 LACS	6.4 LACS

179. Number of branches of the banks have also expanded. Swell in number of branches of the banks have been portrayed in the table below:

YEAR	NO. OF BRANCHES IN PSBs
31.03.2007	49,573
31.03.2008	53,163
31.03.2009	55,720
31.03.2010	59,312
31.03.2011	63,160
31.03.2012	67,930

180. Profits earned by the banks are impressive. Table below would show the profits earned by the banking industry in the recent past:

YEAR	OPERATING PROFIT	NET PROFIT
31.03.2007	Rs. 41,500 crore	Rs. 19,680 crore
31.03.2008	Rs. 48,520 crore	Rs. 25,862 crore
31.03.2009	Rs. 65,227 crore	Rs. 33,514 crore
31.03.2010	Rs. 74,220 crore	Rs. 38,225 crore
31.03.2011	Rs. 95,908 crore	Rs. 43,250 crore
31.03.2012	Rs. 1,11,290 crore	Rs. 47,483 crore

181. Operating profits of the banking industry have increased by Rs.70790 crores while net profits have gone up by Rs.27800 crores. Therefore, it has emerged over the record that financial capacity of the banking industry as a whole to pay higher fall back wages and incentive remuneration have been brought over the record. Financial capacity of a particular bank has also been substantiated though the depositions of the witness produced by the Association and the banks, who deposed that the banks are earning profits from last many years. Therefore, it is evident that not only the banking industry as a whole, but the individual banks, where small deposit scheme is being run, have financial capacity to pay higher fall back wages and incentive remuneration to the deposit collectors, engaged by them.

182. Now, for consideration of this Tribunal, the question emerges as to what amount of fall back wages should be paid to deposit collectors without any undue restraint on financial resources of the banks? At the cost of repetition, it is said that the fall back wages and incentive remuneration paid to the deposit collectors, are too meager even to meet standards of minimum wages, notified from time to time. Minimum wages for clerical staff in schedule employments, who are matriculates but not graduates have been notified by Government of NCT of Delhi at Rs.9386.00 per month and for graduate and above, it has been notified at Rs.10,218.00 per month. Delhi is 'A' area city. Therefore, for 'A' area city, fall back wage for deposit collectors should not be less than Rs.9386.00. It has been argued on behalf of the banks that no age and qualification are prescribed for a deposit collector. However, it is an admitted fact that a deposit collector has to perform clerical jobs, besides collection of money from the account holders and to deposit it with the bank(s) on the next date. For performance of such a job, a deposit collector should be a matriculate. No evidence has been adduced by any of the banks that deposit collectors, working with them, are non-matriculates. Under these circumstances, the Tribunal has to fix fall back wages, equivalent to the minimum wage received by a clerical staff in schedule employment, who is a matriculate but not a graduate.

183. With above standards in mind, the Tribunal thinks it expedient to fix minima limit of collection, to which a deposit collector should adhere in all circumstances. For ascertaining that limit of collection, it is to be taken note of as to what amount of money is being collected by the deposit collector in a month. Shri Ponnusamy unfolds that in the year 1978, he used to collect a sum of about Rs.3 lac per month. As on date (he entered the witness box in May 2011), he is collecting a sum of Rs.12 lacs approximately in a month. Shri Ashish Bilala declared that he is earning a sum of Rs.12000.00 to Rs.13000.00 per month, as fall back wages and incentive remuneration. He deposed in bold words that he is collecting a sum of Rs.6,50,000.00 from the account holders per month. According to Shri Ashok Kumar,

he collects a sum of Rs.1,50,000.00 to Rs.2 lac per month from the account holders. Shri A.K. Shivanand Babu deposed that he collects a sum of Rs.3,50,000.00 to Rs.3,75,000.00 per month from the account holders. Shri Ponnusamy operates in Chennai, which is 'A' area city while all other witnesses except Shri Bilala operates in 'B' area cities. Shri Bilala operates in 'C' area city. Facts detailed by above witnesses, relating to quantum of collection made by them, make me to conclude that a deposit collector in 'C' area city would be able to collect atleast a sum of Rs.3 lacs per month from the account holders. A deposit collector from 'B' area city can collect a sum of Rs.4 lac, while a deposit collector from 'A' area city would be able to collect a sum of Rs.5 lac per month from the account holders. Resultantly, a minima ceiling of collection of Rs.3 lac for 'C' area city, Rs.4 lac for 'B' area city and Rs.5 lac per month for 'A' area city is to be fixed for the deposit collectors. On a collection of Rs.3 lac per month, the bank is required to retain roughly an amount of Rs.90,000.00 towards cash reserve ratio and statutory liquidity ratio. A sum of Rs.2,10,000.00 would be available with the bank for investment through advances to the general public. On this amount, the bank had to spend 5% as its cost. The bank may advance that amount at an interest rate of 14% per annum. When cost ratio of the bank is deducted, the bank earns 9% interest approximately per annum on the amount referred above. Cost ratio of the bank on the amount kept for CRR and SLR would be neutralized by the earnings of the bank on statutory liquidity ratio. Thus, an amount of Rs.2,10,000.00 per month, so collected by the deposit collector for a year, would fetch an earning of Rs.1,22,850.00 to the bank. Out of this earning, a sum of Rs.8000.00 per month would be awarded as fall back wages to the deposit collectors working in 'C' area cities. In a year, he will get Rs.4000.00 as gratuity. Thus, in a 'C' area city, the bank had to spend on fall back wages and gratuity, a sum of Rs.1 lac out of the earning of Rs.1,22,850.00.

184. On collection over and above Rs. 3 lac, but upto Rs.5 lac, a deposit collector would get an incentive remuneration of 3% and on collection over and above Rs.5 lac per month, he will get incentive remuneration of 2% only. Therefore, a deposit collector of 'B' area city who had to collect a minima of Rs.4 lac per month, will get fall back wages of Rs.8000.00 besides incentive remuneration of Rs.3000.00 a month. His pay packet would come to Rs.11000.00 in a month, besides a gratuity of Rs.4000.00 a year.

185. A deposit collector in 'A' area city shall collect a sum of Rs.5 lac per month. His pay packet would be Rs.8000.00 as fall back wages and Rs.6000.00 as incentive remuneration, besides a gratuity of Rs.4000.00 in a year. If deposit collectors of any area collects over and above Rs.5 lac in a month, he will get incentive of 2% on that amount. Thus, by collecting more than Rs.5 lacks in a month, the deposit collectors may earn more. The amount, which

will come to them towards fall back wages and incentive remuneration, would be over and above the minimum wages, so notified. By making that payment to the deposit collectors, the banks would not be strained financially at all. The fall back wages and incentive remuneration, as referred above, can well be compared to the wages earned by a deemed part time clerical staff, employed in the bank and the minimum wages fixed for skilled clerical staff in scheduled employments.

186. One may advance argument that fixation of minima amount to be collected by the deposit collections of 'C' area, 'B' area and 'A' area city is a concept not prevalent in the banking industry or any comparable industry. However, that proposition is not factually correct. The insurance industry employs development officers on its role, who are paid wages and incentive on the basis of their performance. Life Insurance Corporation of India Development Officers (Revision of Certain Terms and Conditions of Service) Rules, 1989 and General Insurance (Rationalization of Pay Scales and Other Conditions of Service of Development Staff) Amendment Scheme, 1987 provide an example in that regard. When these rules and schemes are scanned, it emerges over the record that the development officers, employed in insurance industry, are paid wages and incentive in accordance with the performance made by them. In case they fail to meet required standard of collection, incentive paid to them is deducted or stopped and decrements are made out of their wages. When a development officer continues not to attain the criteria fixed for him, his services are dispensed with. Therefore, it is evident that minima of collection as fixed for the deposit collectors for respective areas cannot be said to be a new concept. Minima of Rs.3 lac in a month for 'C' area, Rs.4 lac for 'B' area and Rs.5 lac for 'A' area is the standard requirement of performance, expected of a deposit collector to sustain himself in the industry. He can meet that standard by collection of that amount in every month or by way of collection of Rs.9 lac, Rs.12 lac and Rs.15 lac respectively, as the case may be for area-wise, at the end of the quarter ending 31st March, 30th June, 30th September and 31st December every year. In case a deposit collector is unable to collect the minima amount consecutively for two quarters, he would be bade farewell by the bank, by terminating his contract of service. An inefficient person has no place in the industry. In case of failure of a deposit collector to meet the required standards, he would not be able to serve the bank, since his retention at the cost of loss to the bank is unwarranted.

187. Conveyance allowance is being paid to the deposit collectors at Rs.50.00 per month for deposit of less than Rs.10,000.00 and at Rs.100.00 per month for deposits of Rs.10,000.00 or above upto Rs.30,000.00 per month. This quantum of conveyance allowance was demanded by the Federation, when it filed its claim before the Industrial Tribunal, Hyderabad, in the year 1981. The Industrial

Tribunal granted that relief in toto and fixed conveyance allowance for the deposit collectors at the above rates. Since 1981 till date, prices of petrol has rolled many a times. It is a matter of common knowledge that the deposit collectors had to reach persons of lower and middle income group, small traders, businessman, artisans, self-employed persons and housewives to collect money from them. A green grocery vendor sitting in subzi mandi would like to give money to a deposit collector in early hours of the day, housewives would give their money during noon hours, when they are free from daily chores, a small trader or businessmen would give money in the evening, while persons employed in business centres and courts etc. may like to deposit their money during day hours. These facts bring it to light that a deposit collector has to reach his customer, according to the convenience of the latter. For that purpose, possibility of going for collection twice or thrice a day cannot be ruled out. One cannot dispute that in 'C' area as well as 'B' area cities, the deposit collectors may have to travel in a radius of 10 kms. daily. In 'A' area cities, he may travel a little bit longer. One cannot be oblivious of the fact that these days such bikes are in the market which are fuel efficient. Manufacturers claim that such bikes have fuel efficiency of running generally 60 kilometers per litre. A deposit collector in 'C' and 'B' area cities may have to travel roughly 500 kms. in a month. For 'A' area city, a deposit collector may avail public transport also. Conspectus of all these facts makes me to comment that atleast 8 to 10 litres of petrol in a month is to be spent by a deposit collector. Keeping all these facts in mind, I am of the view that conveyance allowance of Rs.750.00 per month at flat rate should be granted to all deposit collectors of all areas.

188. On above standard, a deposit collector would get a sum of Rs. 9000.00 in a year towards conveyance allowance. Adding that amount to the cost incurred on a deposit collector for collection of Rs. 3 lac, the bank had to spend only a sum of Rs.96,000.00 on fall back wages + Rs. 4000.00 on gratuity + Rs. 9000.00 as conveyance allowance. In all, banks have to spend a sum of Rs. 1,09,000.00 out of the earning of Rs. 1,22,850.00. This arithmetic projects that by payment of that much of amount, the bank would earn something on a collection of Rs.3 lac per month by a deposit collector of 'C' area city. Earning of the bank would be more on collection of deposit collectors of 'B' area and 'A' area cities. When deposit collectors would collect more than the minima prescribed for them, the income of the bank would grow more. Arguments of the bank relating to economic viability of the scheme would have an answer from the above reasoning.

189. The Tribunal has power to give retrospective effect to its award, as held by the Apex Court in *New Edgeson Woollen Mills* (1969(2) LLJ 782) and *Sarva Shramik Sangh, Bombay* (1993 Lab.I.C. 870). It is a well established proposition of law that an industrial adjudicator can treat



the date of demand and the date on which he award comes into force as two extreme points to give effect to the award. The date from which this award would be effective, should be decided by the Tribunal on consideration of facts and circumstances projected herein. As award Ex.WW1/3 highlights, fixation of fall back wages and incentive remuneration was based on the circumstances prevalent in the year 1981. The fall back wages and incentive remuneration fixed by award dated 22.12.1988, remained static till date. The present dispute was raised by the Federation in the year 2003. After raising of the dispute and during the course of adjudication a few of the banks closed their small deposit schemes. In case this award is not given any retrospective effect, then the deposit collectors of the banks, who had closed the scheme, would not be eligible to get any relief out of it. Therefore, I am of the considered opinion that this Tribunal should give retrospective effect to the award so that the deposit collectors, whose case was projected before the Tribunal, may also avail their rights so adjudicated herein. In view of the above discussion, it is concluded that the demand of the Federation/Union for enhancement of fall back wages and incentive remuneration, besides conveyance allowance is justified. The issue is answered, accordingly.

### Relief

190. In view of the findings recorded on issue No.1, it is ordered that deposit collectors operating in 'A' area, 'B' area and 'C' area cities would collect atleast Rs.3 lac, Rs.4 lac and Rs.5 lac per month respectively. They can meet the target every month or may collect a sum of Rs.9 lac, Rs.12 lac and Rs.15 lac respectively on 31st March, 30th June, 30th September and 31st December every year. On a collection of Rs.3 lac, a deposit collector would get fall back wages of Rs.8000.00 per month, besides conveyance allowance of Rs.750.00 per month. He will also get gratuity of Rs.4000.00 every year. On a collection of over and above Rs.3 lac and upto Rs.5 lac, all deposit collectors, irrespective of their areas of operation, will earn incentive remuneration of 3%. Thus, a deposit collector of 'B' area and 'A' area city would get Rs.3000.00 and Rs.6000.00 respectively per month as incentive remuneration on minima limit of their collection. On collection of over and above Rs.5 lac, a deposit collector would get incentive remuneration of 2%. All deposit collectors, irrespective of areas of their operation, would get conveyance allowance at flat rate of Rs.750.00 per month.

191. In case of failure of a deposit collector to meet minima standard of collection consecutively for two quarters of a year, his contract of service would be snapped by the bank without any further notice to him. For this inefficiency, he will not be able to claim any right of being heard from the bank.

192. The award will have retrospective operation from 19.07.2005, the date when the banks were summoned to appear before the Tribunal. An award is, accordingly,

passed. It be sent to the appropriate Government for publication.

Dated : 07.10.2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2013

**का०आ० 2619.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, धनबाद के पंचाट (संदर्भ संख्या 170 of 1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/11/2013 को प्राप्त हुआ था।

[सं० एल-20012/208/1998-आई आर (सी-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 20th November, 2013

**S.O. 2619.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 170/1999) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. CCL and their workmen, received by the Central Government on 20/11/2013.

[No.L-20012/208/1998-IR(C-I)]

M. K. SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No.2) AT DHANBAD

**PRESENT :** Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

#### Reference No. 170 of 1999

#### PARTIES

: The Zonal Secretary,  
United Coal Workers'  
Union, Jarangdih Bazar,  
Bokaro

Vs.

The Project Officer,  
Dhori Colliery of M/s  
CCL, PO:Dhori, Bokaro.

#### APPEARANCES :

On behalf of the workman/  
Union : Mr. D. Mukherjee, Ld.  
Advocate

On behalf of the Management : Mr. D.K. Verma, Ld.  
Advocate

State : Jharkhand Industry: Coal

Dated, Dhanbad, the 1st Oct., 2013

### AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/208/98-IR(C-I) dt. 05.04.1999 & 19.07.1999.

### SCHEDULE

"Whether the action of the Management of Dhori Colliery of M/s Central Coalfields Limited, in not regularizing the services of 145 workmen mentioned in the list is legal and justified? If not, to what relief the concerned workmen are entitled?

The case of sponsoring United Coal Workers Union for 145 workers as per the list is that the workmen have been continuously performing the job of wagon loading and levelling, Shale Picking, Coal breaking, Track cleaning etc. though permanent and prohibited under the direct control and supervision of the management for the last 9 to 10 years, each of them by putting in more than 240 days attendance in each calendar year. They have been rendering their services with the tools supplied by the management and producing goods for the benefits of colliery management. Till then the management is paying the workmen concerned the wages below the rates of NCWA in the name of different intermediaries/which is a legal camouflag to conceal the real issue, by not maintaining the names of the workmen in the statutory Registers. Neither the alleged intermediaries/contractors have any licence nor the management has any Registration Certificate under the Contract Labour (Regulation & Abolition) Act for engaging the workmen in the said jobs. Despite several times representations by the workmen and the Union for their regularization, wages and other benefits as per the NCWA, the management did not do so, just as its adamancy in the conciliation proceeding in the Industrial Dispute raised by the Union before the A.L.C. (C), Hazaribagh resulted in the reference for an adjudication. Though the Award passed by the CGIT No. 1, Dhanbad, in Reference No. 37/1990 of similar case of Jarangidih Colliery which was confirmed by the Hon'ble High Court (Division Bench) in the C.W.JC No. 139/92(R) was already implemented. Thus the action of the management in not regularizing the workmen is illegal and unjustified.

3. In rejoinder under the signature of Mr. D. Mukherjee, Ld. advocate it has been categorically denied all the allegations of the O.P./Management, stating that the

management had made perfect paper arrangement of alleged sham contract to camouflage the real issue.

4. Whereas the contra case of the O.P./Management with specific denials is that neither any employer-employee relationship exists between the management and the workmen concerned nor the management engaged them through selection or recruitment for any job at Dhori Colliery or at any other colliery. They were neither paid any wages nor controlled by the management. The Management of M/s BCCL entered into a five years agreement with the ESSEM Transport Contract on 29th December, 1989 for loading of coals into wagons with the help of Pay-Loaders and breaking lumpy Coals mechanically as and whenever required. The same agreement was subsequently renewed year to year in view of the satisfactory performance of the said contractor. As per the Notification dt. 21st June, 1988 of the Central Government under Sec. 10(1) of the contract labour (R & A) Act, 1970, engagement of contractor labour was prohibited on loading & unloading of coal into Railway wagons by the Railways. The said contractor firm was registered by the ex-servicemen with the concurrence of the Central Government for their gainful employment in carrying on the contractual jobs manually for operating machines, and transport operations at different parts of the country.

5. Further it is alleged by the O.P./Management that the Public Sector Coal Companies undertook to assist ex-servicemen organization in awarding a contract and providing necessary loan/advances in procuring the machineries for the Organization. The transport Contractor was awarded a contract for loading coal into the wagons with the help of pay-loaders at the Railway siding of Dhori Colliery, for dumping of coal at the siding at different units. The management had initially provided three pay-loaders to the aforesaid contractor on higher purchase basis, and the amount was realized from the contractor's bills on instalments. The contractor engaged mostly its ex-servicemen in the operations of the pay-loaders and other Machineries related to breaking the lumpy Coals and loading of coal into Railway wagons. The Management quite unconcerned with any of the persons a unaware of the number of days of attendance put by some of them in different areas. As the contractor has not been made a party to the Reference, the management can not identify them under the contractor. The possibility of engagement of a large number of 145 workmen by the contractor for carrying on incidental jobs of loading coal into wagons by the three pay-loaders and breaking the lump coal with feeders breakers and other appliances is absurdity. The large number of job seekers under the union appear to demand for their recruitment through litigation. Their claim is liable to be summarily rejected. They are not entitled to any relief.

6. Categorically denying the allegations of the Union/workmen, the O.P./management in its rejoinder has alleged that the jobs of shale picking, wagon moving and truck claiming are done by the workmen of the company. The case of the workmen as in the Reference No. 37/90 is quite different from the present case, to which the principle of law is not applicable.

### FINDING WITH REASONS

7. In the instant case, WWI Shain Bhuia, one of the workmen for the Union and MWI Ajit Kumar Singh, the Chief Manager (Pers.), Dhori area, Bokaro for the Management have been examined respectively.

According to the statement of WWI Shian (Shiwan) Bhuia (workmen under Sl. No. 67 of the enclosed list) as one workman for all ones, they have been continuously performing the job of picking shales, cleaning Rly. tracks and levelling the wagons on the Railway siding of Dhori Colliery of CCL since 1996 till now with the tools supplied by and under the supervision of the Management, they are paid by the men of the Management for their jobs. As contrasted with the aforesaid oral statement, he has proved the photocopies of their salary sheets for Sept., Nov., and Oct., 1992 as Ext. 1, 1/1 and 1/2 respectively, and the photocopies of V.V. Statements for April to March 1993-94 to 1996-97 as Ext. 2 series respectively, and the photocopy of the letter of Sri B.N. Singh, Personnel Manager of Dhori Colliery for C.P.E./03/2000 for April to May, 12, 1999 as Ext. W.2. His evident admission is that neither they were interviewed nor they had any appointment letter or any document as proof of their job of shale picking or cleaning of the Railway Tractk. Though the witness (WWI) is quite unaware of whether the documents (Ext. 2 series) are the payments sheets of Essem Contractor, he treats the same for the management.

Whereas, the statement of MWI Ajit Kumar Singh, the Chief Manager (Pers.) of Dhori Area, Bokaro, reveals neither engagement of any of the total 145 workmen by the management for shale picking, coal breaking, wagon levelling and track cleaning etc., nor that of a contractor for loading wagons, rather awarding by the management a contract to the ESSEM Transport Contractor transportation of coal and loading of coal through Pay Loader (a Machine) and the said contractor is of the Ex-servicemen. The Management witness has not seen the licence of the said contractor or its registration of the Company. He (MWI) also seems unaware of any document concerning the engagement of the ESSEM Transportation Contractor for transporting of coal.

8. Assailing the case of the O.P./Management, Mr. D. Mukherjee, Learned Advocate for the workmen has to submit that the pleading of the management about entering

into a agreement with ESSEM contractor for loading of coal, and carrying on the job of shale picking by the workmen of the company under Para 4 and 14 of its written statement being unsubstantiated are not proof. But the oral statement of MWI Ajit Kumar Singh, the Chief Manager (Pers.) of Dhori Area as to awarding a contract to the ESSEM contractor for loading of coal in the very first Para of his deposition appears to be substantiated as a crystal clear proof which stands assertive in the face of the salary sheets of only 26 workmen out of total 44, 45 and 43 ones for the year 1992 (Ext. 1 series) respectively as contrast with the 145 as per the list of the reference case just as all the photocopies of VV Statements (2 Series) as proved on behalf of the workmen, and each document proves the relevant 26 workmen not all 145 ones, worked under the said ESSEM Transporters & Contractors (P) Ltd. The inclusion of Ex-Hav.B.R.(Balak Ram) Pal, H.N. Sahay, Kulwant Singh and Ex. N.K. Baljit (Dalbir) Singh under Sl.No. 2, 12, 10, 11 respectively in the list of the workmen substantiates the case of the O.P./Management as proved by the statement of the management witness (WWI) that the aforesaid the Essem contractor (P) Ltd. was of Ex-servicemen undoubtedly. The V.V. Statements for financial years 1993-94, 1995-96 and 1996-97 by the said contractor for alleged workmen in 110, 110 and 104 in numbers only (Ext. 2/1-3 respectively) and for one and half month in the year 1999 for 100 workmen prove the employment by the said contractor as their employer who also co-contributed their shares as the alleged workmen did as their member's share toward the P.F. and F.P. under the mandatory provision of Sec. 10D of the Coal Mines Provident Fund and Misc. Provisions Act 1948 under signature of the said contractor and the Personnel Manager of Dhori Colliery. But none of the documents proves the workmen as the employees of the O.P./Management in any way, as the wages were paid by the contractor; hence, the contractor primefacie discharged his liability. So far as the latter pleading about the carrying on the job of shale picking etc. by the workmen of the Company is concerned, it being unsubstantiated is inadmissible.

9. Further Mr. Mukherjee, Ld. advocate for the workmen has emphatically submitted that in the present case that neither the intermediary/Contractor has any licence nor the Management has its registration as required under the mandatory provisions of section 12, 7 and 9 of the Contract Labour (R & A Act 1970 in violation of which the alleged contractor has now existence, hence has to be kept out on the principle of lifting the veil which disclosed early the employer-employee relationship as held in the case of the Secretary, Haryana State Electricity Board Vs. Suresh Others, 1999 (2) L.L.N. 612(SC) since the pleadings are unsubstantiated on behalf of the workmen, the pleading is not substitute for proof. Moreover the relationship of the workmen with the aforesaid Essen Transporters &



Contractors (P) Ltd. has been evasively admitted through their own photocopies of their salary sheets and P.F. & F.P. (Extt. W.1 and 2 series respectively), it again clearly disproves any employer-employee relationship between the workmen and the management, one of the vital factors to be employee of the management. Hence, the aforesaid ruling appears to be inapplicable to their case. Besides, the decision of the Hon'ble Supreme Court in the case of *Indian Farmers Fertilizer Co-operative Ltd., Industrial Tribunal I, Allahabad & Ors., 2002(2) I.L.N. 368* related to retrenchment as cited by Mr. Mukherjee, Ld. Advocate for the workmen similarly holds not good with the present case where there is no case of direct or indirect employees of the principal employer in view of admissions of the workmen about their payment of wages by the Essem Contractor for their work under it as evident from their proved photocopies of documents (Extt. W.1 and 2 series). The aforesaid ruling relates to the contention to appellant employer that the workmen were not direct employers but contractors; Tribunal on appreciation of the facts held the workmen not contract labours, but direct employees, and should be declared to be continuing in service, and the same was upheld, taking into the account of nature of the employment to be decided necessarily (Para 5). Where the Union/any of the large number of the workmen has no proof of their working as shale picking etc. in the colliery, so the ratio decidendi of the Authority is distinct from the facts of the case.

10. Further vociferous plea of Mr. Mukherjee, Ld. Counsel for the workmen is that the Awards passed by the CGIT No. 1, Dhanbad in similar situated, References Nos. 156/94 & 72/1995 (distinct from the reference No. 37/1990 referred in the pleading only) for regularization of the workmen concerned with back wages where the management had no plea of employer-employee relationship between management and the workmen were confirmed upto the Hon'ble Supreme Court in (D,B,)S.L.P.(Civil)/15253/1999 as also in the Civil Appeal No. 8526/2002 following the dismissal of another writ petition of management by the Hon'ble Jharkhand High Court, were implemented by the management after entering into the bipartite agreement with workmen. But these instances as insisted by the Learned Advocate for the workmen may not be absolute criteria for an adjudication in the present reference, because every ratio acts upon its own case. In the present case, the workmen have been failure in proof of any camouflage against the management as also contended by Mr. D.K. Verma, Learned Counsel for the O.P./Management. Therefore, the plea of Mr. Mukherjee, Ld. Advocate for the workmen based on the ruling 2002 (2)L.L.N. 368(SC), *Farmers Fertilizer Cooperative Ltd. Vs. Industrial Tribunal (Supra)* as dealt with in earlier Para appears to be unpersuasive and unreasonable. A suo motto inference as conceived by the Learned Counsel for the workmen may

not add any feather to the cap of their case of the term "Camouflage".

11. Further it has been strenuously again argued by Mr. Mukherjee, the Sr. Counsel for the workmen that the decision of the Hon'ble Apex Court in *Hussainabhai Vs. Alath Factory, SCW Vol/(15) 112* mandates three factors (i) For whom workers work, (ii) economic control and (iii) Doctrine of lifting the veil-as true test to identify the employer-the law laid down is till binding upon all; that the ruling of the Hon'ble Apex Court in *Secy. State of Karnataka Vs. Umadevi, (2006)(3) SCC (L & S)753* does not apply to the present case where as the case of the Official Liquidator *Vs. Dayanand (2009)(1)SCC(L & S)943* concerns with "equal pay for equal work", but not with the contractor workers or regularization.

Further Mr. Mukherjee insistently has argued, urging to go through the rulings referred below, that therein all, the Hon'ble Supreme Court has held to stop exploitation of the poor workmen by the management through alleged contractor by paying them less wages and denying their facilities since the Industrial Dispute Acts has been enacted for protection and interest of the poor workmen:

- (i) 1963(ii)LLJ447, *Bqsti Sugar Mills Vs. Ram Ujagar,*
- (ii) 1964(ii) LLJ 633, *D.C. Dewan Mohuiddin Sahib & Another Vs. United Salt Workers' Union,*
- (iii) SCL(15)-*Royal Talkies Vs. E.S.I.; and*
- (iv) F.L.R.1990 (60) 20-*Shankar Mukherjee Vs. Union of India.*

Further highlighting the right of the workmen, Mr. Mukherjee for the workmen submits that in the case of *G.M. O.N.G.C., and Shilcher Vs. O..G.C. Contractual Workers' Union 2008 AIR SCW 3996*, the Hon'ble Supreme Court has held the case of *Uma Devi*. In applicable to the regularization of contract workers, but contract workers are entitled to regularization. Besides it is submitted on behalf of the workmen that their Lordship held in the latest case of *Bhilwara Dugdh Upadak Sahakari Ltd., Binod Kr. Sharma, 2011 L.L.R. 1079(SC)* that in order to avoid their liabilities under various labour statues the employers are very often resorting to subterfuge by trying to show that their employees are, in fact, the employees of the contractor; it is high time that his subterfuge must come to an end'.

12. Where Mr. D.K. Verma, Learned Advocate for the O.P./management has contended that in face of very evident admission of the workmen as contractor workers how it can be alleged/pleaded camouflage which is still unproved; they have neither got any appointment nor have any paper as proof of their alleged job of pick shale etc. under the management. Further it has been argued by Mr. Verma, that



their documents have proved their status as the workers of ESSEM Transport Contractor under whom they worked, and were paid by the said contractor for their works concerned and the contractor contributed their respective shares of P.F. and F.P. for the period of their work under the Coal Mines Family Pension Scheme. Mr. Verma has to submit for the O.P./Management that the Hon'ble Apex Court in case of Steel Authority of India Ltd. Vs. N.U. Water Front Workers, Lab. I.C.2001 at page 3656 held that contract workers are not entitled to regularization in the services of principal employer just also held in the case of State of Karnataka Vs. Uma Devi reported in (2006)(3)SCC(L&S)753 that such employees (contractual/casual) do not have enforceable legal right to be permanently absorbed (Para 52), so none of the rulings cited on behalf of the workman is applicable to the case.

13. On the perusal and consideration of the materials available on the case record, and after hearing the argument of the both learned counsels for the parties concerned, the serene reflection surfaces the failure of the Union

Representative to establish the crucial point at which point of time a direct link was established between the both the contract labourers and the Principal Employer as viewed and held by the Hon'ble Apex Court in the case of R.K. Panda Steel Authority of India Ltd., 1994 AIR SCW 2460(1994)55CC 304.

At the second factor of alleged continuous services, the Union/the workmen have no proof of their actual continuous working for 240 days/minimum period as required under Sec. 25B(2)(a) of the Industrial Dispute Act.

In result, it is hereby responded, and accordingly.

#### ORDERED

That the Award be and the same as passed that the action of the Management of Dhori colliery of M/s. Central Coal Fields Ltd., in not regularizing the services of 145 workmen (Rajeshwar Singh & Ors.) as per the list enclosed, is quite legal and justified. Therefore, the concerned workmen are not entitled to any relief whatsoever.

KISHORI RAM, Presiding Officer

#### ANNEXURE-I

##### List of the Employees Engaged in Dhori Colliery Railway Siding by the Central Coalfields Limited Management

Sl.	C.M.P. F. No.	Name of the employee	Father's name
1	KGL8/1225	Rajeshwar Singh	Kameshwar Singh
2	KGL8/1223	Balak Ram Pal	Ram Charan Pal
3	KGL8/1227	Binod Kumar Singh	Shiv Bachan Singh
4	KGL8/1228	Firoz Khan	Abdul Zabir Khan
5	KGL8/1229	Brindaban Chakraborty	Nimal Chakraborty
6	KGL8/1247	Md. Zafar	N.D. Alln
7	KGL8/1238	Dilip Kumar Mahtha	Akul Chand Matha
8	KGL8/1231	Monaj Kumar Ojha	S.O. Ojha
9	KGL8/1232	Ramashankar Singh	Ramgohn Singh
10	KGL8/1233	Kulwant Singh	Gongn Singh
11	KGL8/1234	Dalbir Singh	Tara Singh
12	KGL8/1235	H.N. Sahay	B.M. Pd. Sahay
13	KGL8/1238	Binay Kumar Biswas	Bholanath Biswas
14	KGL8/1239	Jyoti Lal Mallah	Mahadeo Mallaha
15	KGL8/1244	Ashok Kr. Srivastava	A.P. Prasad
16	KGL8/1245	Md. Haidar Ali	Md. Islam
17	KGL8/1248	Kailash Yadav	Ganesh Yadav
18	KGL8/1249	Ashok Pandit	Sukhdeo Pandit
19	KGL8/1250	Fagulal Tudu	Sitaram Tudu
20	KGL8/1251	Bipin Kumar Singh	Kameshwar Singh
21	KGL8/1253	Sunil Singh	Ramadhan Singh
22		Dhiran Rawani	Bijay Rawani

Sl.	C.M.P. F. No.	Name of the employee	Father's name
23	KGL8/1255	Durga Das Chakraborty	G.C. Chakraborty
24	KGL8/1367	Vidhyadhar Das	Phachal Das
25	KGL8/1257	Guchent Mandal	Nagendra Mandal
26	KGL8/1258	Sunil Kr. Mahtha	Nakul Chandra Mahato
27	KGL8/1259	Haradhan Roy	Kamal Kant Roy
28	KGL8/1261	Shankar Mahaliya	Puran Mahaliya
29	KGL8/1262	Ramasharan Singh	Jharkhandi Singh
30	KGL8/1263	Md. Kayum Ansari	Md. Johar Ali
31	KGL8/1264	Md. Siraj Khan	Md. Gafar Khan
32	KGL8/1265	Baljit Singh	Sawarup Singh
33	KGL8/1311	Ranjit Singh	Kishan Singh
34	KGL8/1337	Tikhan Bhuiyan	Beni Bhuiyan
35	KGL8/1314	Sunil Boren Patandi	K.B. Paitandi
36	KGL8/1388	Rakash Kumar Singh	Sisupal Singh
37	KGL8/1389	Ganga Bux Singh	Pittu Singh
38	KGL8/1390	Nirbhan Singh	Sarabjit Singh
39	KGL8/1391	Ram Pratap Singh	Sunder Singh
40	KGL8/1392	Kripa Shankar Singh	Kharatilal Singh
41	KGL8/1393	Baleshwar Yadav	Dev Lakhan Yadav
42	KGL8/1394	Udaibhan Singh	Shishupal Singh
43	KGL8/1395	Anurodh Singh	Dasrath Singh
44	KGL8/1396	Kailash Narayan Mishra	Baijnath Mishra
45	KGL8/1397	Ghanshyam Singh	Ramadhar Singh
46	KGL8/1315	Kuldip Singh	Lakhan Singh
47	KGL8/1380	Praveen Kumar Singh	Rajkumar Singh
48	KGL8/1385	Niwas Chandra Mahato	Gopal Chandra Mahato
49	KGL8/1316	Arun Kumar Gorai	Pana Gorai
50	KGL8/1313	Ishwar Bauri	Fakir Bauri
51	KGL8/1318	Mohan Thapa	Jang Bhadur Thapa
52	KGL8/1321	Gulab Chandra Bhuiya	Chhutu Bhuiyan
53	KGL8/1322	Gobardhan Bauri	Debu Bauri
54	KGL8/1323	Jamindar Bhuiyan	Bindeshar Bhuiyan
55	KGL8/1325	Chhotu Bauri	Sashi Bauri
56	KGL8/1326	Sgaunath Singh	Chhotalal Singh
57	KGL8/1327	Pairu Bhuiyan	Saru Bhuiyan
58	KGL8/1328	Ajit Bauri	S. Bauri
59	KGL8/1329	Manik Bauri	Shashi Bauri
60	KGL8/1330	Munna Munda	Shankar Munda
61	KGL8/1331	Dilip Das	Rama Ashish Das
62	KGL8/1332	Ramprit Munda	Fukhen Munda
63	KGL8/1333	Anand Bauri	S. Bauri

Sl.	C.M.P. F. No.	Name of the employee	Father's name
64	KGL8/1334	Gopal Bauri	C. Bauri
65	KGL8/1335	Ram Praveesh Gossain	Kunja Gossain
66	KGL8/1336	Ratun Bhuyan Kuzza	Kare Bhuyan
67	KGL8/1338	Shiwan Shuyan	Bani Bhuyan
68	KGL8/1339	Chandan Bauri	Sasthi Bauri
69	KGL8/1340	Dhaney Bauri	T.B. Thapa
70	KGL8/1341	Narayan Bauri	Nakul Bauri
71	KGL8/1342	Rajev Bauri	M. Bauri
72	KGL8/1343	Mahesh Pd. Gupta	R.B. Gupta
73	KGL8/1344	Krishna Bauri	Mana Bauri
74	KGL8/1345	Shiv Charan Bauri	Shiku Bauri
75	KGL8/1346	Rajkumar Sahani	Siblal Sahani
76	KGL8/1347	Ajay Kumar Ravidas	Kishori Mohan Ravidas
77	KGL8/1324	Rshssh Munda	K. Munda
78	KGL8/1319	Nand Kishor Bauri	Shripati Bauri
79	KGL8/1377	Samar Chakraborty	Sudhir Chakraborty
80	KGL8/1349	Shankar Bauri	Shri Ram Bauri
81	KGL8/1375	Sanjay Shuman	Karu Sharma
82	KGL8/1237	Debashish Sarkar	Sourindra Mohan
83	KGL8/1320	Binod Bhuiyan	Sukhlal Bhuiyan
84		Nand Kishor Singh	Kashi Pd. Singh
85		Ajit Pd. Gupta	Ram Bilan Prasad
86		Ayodhya Mahato	Atma Ram Mahato
87		Jaraam Pd. Nishad	Ram Pd. Nishad
88		Bashant Ram	Gautam Ram
89		Rajhiws Bhiyian	Raghu Bhuiyan
90		Lochan Mahato	Khalo Metha
91		Chitra Bhuiyan	Dukan Bhuiyan
92		Babu Chand Bhuiyan	Kishun Bhuiyan
93		Raghubeer Paswan	Aliyar Paswan
94		Radheshwar Bhuiyan	Khilash Bhuiyan
95		Sita Ram Nishad	Ram Pd. Nishad
96		Nimal Bauri	Serat Bauri
97		Md. Kamal	Niyamat Ali
98		Rohan Mahato	Nand Lal Mahato
99		Shyam Lal Oraon	Mali Oraon
100		Nunu Chand Mahato	Nand Lal Mahato
101		Jawahar Lal Yadav	Bhotha Yadav
102		Prasant Kr. Singh	Pras Nath Singh
103		Md. Fazil	Besharat Ali
104		Nandu Urawn	M. Urawn

Sl.	C.M.P. F. No.	Name of the employee	Father's name
105		Rakho Hari Chakraborty	Prabhat Chakraborty
106		Shahid Anwar	Md. Rafique
107		Anand Prakash Vidyarthi	Late. M.P. Vidyarthi
108		Kalyan	Ganesh
109		Sukhchand	Kaur Singh
110		Kuldip	Rup Singh
111		Nirmal Mahato	Kameshwar Mahato
112		Rajendra Pd. Mahato	Rohan Mahato
113		Narayan Mahato	Bishwanath Mahato
114		Ram Lal Oraon	S. Oraon
115		Surendra Pd. Mahato	Rohan Mahato
116		Bajrangi Singh	Rjeshwar Singh
117		Niralal Mahato	Mohan Mahato
118		Kameshwar Mahato	Pati Mahato
119		N. Manoj Oraon	Shankar Oraon
120		Gupteshwar Pd. Yadav	T.P. Yadav
121		Mithilesh Kumar Sinha	R.K. Sinha
122		Ramduler Thakur	Prayag Thakur
123		Ramkumar Thakur	Prayag Thakur
124		Gyan Prakash	D.S. Prakashan
125		Kanchan Gopal Tiwari	Kanan Gopal Tiwari
126		Tripurari Rawani	Ram Chandra Rawani
127		Gopi Mahato	Ugan Mahato
128		Baijnath Gupta	Nageshwar Gupta
129		Suchit Kumar	Late Budhan Rawani
130		Rajendra Ram	Dhaneshwar Ram
131		Sheo Narayan	Murle Bhuiyan
132		Binod Sonar	Late Madhusudan Sonar
133		Rashid Hasan	Md. Rafique
134		Santosh Kumar	Mahanand Prasad
135		Md. Asgar	Md. Daud
136		Samit Kumar	Ajit Kumar Ghosh
137		Raj Kumar Rajak	Sanatan Rajak
138		Nakul Das	Jagmohan Das
139		Mantu Das	Mahadeo Das
140		Amod Kumar Pathak	
141		Sunil Kumar	Awadesh Pd.
142		Ashok Mukhi	Late Hanoo Mukhi
143		Jugnu	Rameshwar
144		Rajesh Prasad	
145		Chandra Shekhar Prasad	Sita Ram Rewani



नई दिल्ली, 25 नवम्बर, 2013

**AWARD**

**का०आ० 2620.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार बी सी सी एल प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, धनबाद के पंचाट (संदर्भ संख्या 05 का 2012) को प्रकाशित करती है, जो केंद्रीय सरकार को 25/11/2013 को प्राप्त हुआ था।

[सं० एल-20012/67/2011-आईआर (सीएम-1)]  
एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 25th November, 2013

**S.O. 2620.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Govindpur Area of M/s. BCCL, PO: Sonardih and their workmen, received by the Central Government on 25/11/2013.

[No. L-20012/67/2011-IR (CM-I)]  
M.K. SINGH, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD**

**PRESENT:**

Shri Kishori Ram,  
Presiding Officer

In the matter of an Industrial Dispute under Section  
10(1)(d) of the I.D. Act, 1947.

**REFERENCE NO. 5 OF 2012**

**PARTIES** : The vice President  
Janata Mazdoor Sangh,  
Vihar Building, Jharia  
(Dhanbad)  
  
Vs. Gen. Manager  
Govindpur area of M/s.  
BCCL, Sonardih, Dhanbad

**APPEARANCES:**

On behalf of the workman/ : Mr. K.N. Singh. Ld.  
Union Advocate

On behalf of the : Mr. D.K. Verma, Ld.  
Management Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 24th Oct., 2013.

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/67/2011-IR(CM-I) dt. 20.12.2001.

**SCHEDULE**

"Whether the action of the management of Jogidih Colliery. BCCL in not regularizing Sri Chhatrabali Das as Store Keeper is fair & justified, to what relief the workman concerned is entitled to?"

Neither any Representative for Janta Mazdoor Sangh, Jharia, nor workman Chhatrabali Das appeared, but Mr. D.K. Verma, the Ld. Advocate for the O.P./Management of Govindpur Area of M/s. BCCL present.

On perusal of the case record, in course of pending for the evidence of the management for which last chance was given on 6.3.2013, it was brought to the notice of the Court by producing attested copy of the death certificate dt. 25.3.2013 of the workman Chhatrabali Das, according to which he appears to have expired on 24.3.2013—as produced on behalf of the Management.

Under these circumstances, Industrial Dispute in lack of substitution of the workman by his any heir within time abates; in result, the case is closed as no. I.D. existent and accordingly an order is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2013

**का०आ० 2621.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार बी सी सी एल प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 27 का 1992) को प्रकाशित करती है, जो केंद्रीय सरकार को 20/11/2013 को प्राप्त हुआ था।

[सं० एल-20012/43/1991-आईआर (सी-1)]  
एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 20th November, 2013

**S.O. 2621.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/1992) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1,

Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 20/11/2013.

[No. L-20012/43/1991-IR (C-I)]

M.K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), AT DHANBAD

Reference: No. 27/1992

In the matter of reference U/s 10(1) (d) (2A) of I.D. Act, 1947

**Parties :** Employer in relation to the management of  
Bhulan Bararee Colliery of M/s. BCCL

And

Their workmen.

**Present :** Shri R.K. Saran,  
Presiding Officer

#### Appearances :

For the Employers : Shri Sri U.N. Lal, Adv.

For the workman : None

State: Jharkhand Industry : Coal

Dated 31.10.2003

#### AWARD

By Order No. L-20012/43/91-IR(C-I) dated 26.3.92 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Dispute Act, 1947 referred the following dispute for adjudication to this Tribunal:

"Whether the action of the management of Bhulan Bararee Colliery of M/s. BCCL, in not giving employment to the dependent Shri Mritunjay Biswas, son of late Sh. P.K. Biswas, Ex-Production-cum-Safety Asstt. is justified? If not, to what relief the concerned workman is entitled?"

2. After receipt of the reference both parties are noticed. But appearing for certain dates, none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence pass a No disputed Award is passed. Communicate to the Ministry.

R.K. SARAN, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2013

कांआ 2622.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार बी सी सी एल प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, धनबाद के पंचाट (संदर्भ संख्या 22 का 2000) को प्रकाशित करती है, जो केंद्रीय सरकार को 20/11/2013 को प्राप्त हुआ था।

[सं एल-20012/351/1999-आईआर (सी-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 20th November, 2013

**S.O. 2622.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2000) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 20/11/2013.

[No. L-20012/351/1999-IR (C-I)]

M.K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

#### PRESENT :

Shri Kishori Ram, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

#### REFERENCE NO. 22 OF 2000

**Parties :** The Secretary, Bihar Colliery  
Kamgar Union, Hirapur,  
Dhanbad  
  
Vs. General Manager, P.B. area  
of M/s. BCCL, Kusunda,  
Dhanbad.

#### APPEARANCES :

On behalf of the : Mr. D. Mukherjee, Ld.  
workman/Union Advocate  
  
On behalf of the : Mr. D.K. Verma, Ld. Advocate  
Management  
  
State: Jharkhand Industry : Coal

Dated, Dhanbad, the 7th Oct., 2013.

**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/351/99-IR (C-I) dt. 28.01.2000.

**SCHEDULE**

"Whether the demand of the Union before the management of Balihari Colliery under P. B. Area of M/s BCCL for reinstatement of S/Sri Pradeep Orang & 35 others, as per list enclosed, with full back wages, in the services of the Company is proper and justified? If so, to what relief the concerned workman are entitled and from what date?"

2. The case of workman Pradeep Orang & 35 others as per the list enclosed as sponsored by the Bihar Colliery Kamgar Union, Hirapur, Dhanbad is that all the workmen concerned had been doing the job of cutting stone dusting, isolation stopping line packing, road cleaning, stone dust spreading, sump cleaning etc. of prohibited but of permanent nature of Balihari Colliery under the direct control and supervision of the management since long by putting in more than 190/240 days attendance in each year. They had been rendering their services with all the implements supplied by the management and producing goods for the benefit of the management. But the management kept on paying them their wages below the rates of NCWA through different intermediaries which was nothing but a legal camouflage, and all papers of management to hide the real fact. At their repeated insistences for regularization and payment of their wages as per the NCWA, the management annoyedly and orally terminated their services from February, 1996 in violation of Sec. 25F of the I.D. Act and the principle of natural justice. At last the failure in reconciliation in the industrial dispute raised by the Union before the ALC(C), Dhanbad, resulted in reference for an adjudication. The action of the Management in orally terminating the workmen from their services was illegal, vindictive, anti labour policy and unjustified. So the demand of the Union for their regularization with full back wages is proper and justified.

3. The Union in its rejoinder has categorically denied all the allegations of the O.P./management, stating that the workmen were legally the employee of the management. The management had ever engaged the intermediaries/contractor to produce the coal in the name of "outsourcing". The Management is paying the workmen through Jan Vikas Sharmik Sahayog Samiti, an unregistered one, with a view to camouflage the real issue, as the unregistered Samiti can not be a contractor. Majority of the workmen have been appointed by M/s BCCL without any employment exchange.

4. Whereas the contra case of the O.P./management with specific denials is that neither employer-employee

relationship exists nor the workmen were employed and terminated by the management, so the question of their reinstatement does not arise at all. M/s BCCL is a Government Company which never engaged any intermediary for supply of the Labours. Neither the workmen disclosed the name of the contractor under whom they were working nor the Union supplied the documents/details of the names etc. of the workmen to the management on its demand in the conciliation proceeding before the Conciliation Officer. The Union filed the case on imaginary facts to provide employment to the job seekers through litigation. The M/s BCCL being a Public Sector Undertaking has to make appointment with reservation of SC/SDT through Employment Exchange. It being a state under the Article 12 of the Constitution of India cannot provide employment to anybody in contravention of the Article 14, 16 and 19 of the Constitution.

5. The O.P./management in its rejoinder has categorically denied the allegation of the Union, and stated that the Union/workmen had not specified in which year they had completed 190/240 days. The workmen were never on the roll of the management. So the question of alleged termination or payment of compensation u/s 25 of the I.D. Act 1947 do not rise.

**FINDING WITH REASONING**

6. In the instant reference, WW1 Janardhan Paswan, WW2 Umesh Singh (SI Nos. 33 & 34 as per list respectively) for the Union, and MWI Sushil Kumar Behra, Sr. Officer (Pers.), P.B. area of the O.P./management have been respectively examined.

The statement of WW1 Janardhan Paswan just as his colleague Umesh Singh (WW2) for the first time discloses the period of them workmen's working underground of the Balihari Colliery from 1993 until their stoppage from their work from 1996. They have neither any appointment letter, a Pay-Slip, I.D. Card from the management nor the forwarding of their names by the Local Employment Exchange for the job. He (WW1) had produced the eight photocopies of eight slips for the engagement of their job under the signature of the Manager Sunil Singh, Ray Saheb and D.N. Prasad as Extt. 1 series. Though witness denied any organizational named Jan Vikas Shramik Sahayog Samitee, partially admissible to have written their names on the slips in their pen and used to get the photocopies of their original slips submitted to the management.

But it stands evident from the statement of WW2 Umesh Singh that they worked through the Jan Vikas Shramik Sahayog Samitee, and its name seal figures on the each of the eight Slips, though the witness (WW2) appears to have pointed out Bihar Kamgar Union Co-operative Society beyond the pleading. Both the workmen witnesses claimed to have performed the job of line cleaning and packing, Khaz cutting, stopping (Isolation) etc. by going insides the mines.

7. Whereas statement of MWI Sushil Kumar Behra, Sr. Officer (Pers), P.B. Area affirms neither workmen Pradeep Orang & 35 others as per the list are on the roll of the Company/Balihari Colliery under the P.B. Area, nor there is any document of their alleged termination, so their demand for reinstatement in the company is unjustified. The entry of all the names of the employees working in the Mine into the Form B register of the Company just as Form C Register maintained for them as per the Mines Act is an acknowledged fact by the management witness, though personally ignorant of employees of the company working in the Mines during the period of 1993 to 1995, yet he asserted to file the form C Register for the period.

8. Mr. D. Mukherjee, Ld. advocate for the union/workmen treating the entry of all the names of the employees working in the Mine into the Form B and C register as the Mines Act as admission of the MWI S.K. Behra has submitted that the pleading of the management has not been corroborated by his oral evidence. Mr. Mukherjee insists as usually in all his cases that the pleading is no substitute for proof as held by the Hon'ble Apex court in the case of Manager RBI, Bangalore Vs. S. Mani, 2005 (105) FLR 1067 as also previously viewed by the Hon'ble Allahabad High Court in the case of National Insurance Company Ltd. Vs Jogendra Nath Verma & Ors., AIR 1982 (All), 385 But in the present reference, the evidence of the workmen witnesses 1 & 2 about alleged working period for the year 1993-96 as contrasted with their vague pleading 'working since long' appears to be untenable and baseless, whereas the specific fact of the management that the workmen were never on the roll of the management as deposed by the MWI being based on the pleading stands legally admissible. Likewise the statement of MWI about the entry of all the names of the employees working in the Mines in the Form B and C Register is nothing but assertion of the maintenance of the said mandatory Register by the Management and in that context, the employees working in the Mines mean those employed by the Management only, so the said rulings appear to be wide off the mark.

9. Besides, underlining Doctrine of lifting the veil as the true test to discern the factual relationship of employer and employees in the aspects of workmen's production of goods & services, for whose business, and under whose economic control over it as held in the case of Hussainbhai vs. Nath factory, 1978 Lab.I.C. 1264=1978(4) SCC 257, Mr. Mukherjee, the Learned Senior Counsel for the Union/workmen has referred catena of Hon'ble Apex Court's decision in the matter of regularization as under:

1996(i) LLJ 131, United Salt Works Ltd., V. their workmen-where workmen originally appointed by contractor called 'Mukdoma' were held as the employees of the management;

1963(II)LLJ-477 SC (CB), M/s Basti Sugar Mills Vs. Ram Ujjagar, where the 21 workmen of the factory were

stopped from duty, and the plea of the management was that they were the employees of the contractor but they were held as the employees of the management and accordingly were directed for reinstatement with full back wages; and

1994(II)LLJ-433, DC Dewan Mohiuddin Saheb Vs. United Bidi Workers Union, wherein the contractor used to supply Bidi leaves and tobacco to the workers following the supply of the same by the Principal Employer to him and after preparing Bidi at their homes, the workmen similarly deposited the same through the contractor to the Principal employer, the workers were held the employees of the management;

Further plea of Mr. Mukherjee, Sr. Counsel for the Union is that the management can not snap the real life bond where the livelihood of the workmen substantially depends on labour rendered to the produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or make believe trapping of detachment from the management. Many others simply quoted as in his written argument as relied upon by Mr. Mukherjee are as such:

1994 LLR 634, R.K. Pandey Vs. SAIL

SCW (10)-Royal Talkies

F.L.R. 1990-vol. 60 page 20, Shankar Mukherjee Vs. Union of India.

1987 L.I.C. 619, catering Cleanness Service

1995 (2) C.L.R. 214, National Federation of Rly. Porters M69 (19) FLR 385-Management of Pradeep Lamp Works V. their workmen

2008 AIR SCW 3996, G.M. ONGC Vs. its workers Union and

2011 LLR 1079-Vilwara Dugdh Union.

It is also submitted in behalf of the Mr. Mukherjee that since the case of the Uma Devi, 2006 Lab.IC.3209 as a days beign relied upon by the management that the workmen are not entitled for regularization relates to the Government employees, their employment was de hors Art. 309 of the Constitution, but the present case has no dispute of employer-employee relationship. But in the present case, such relationship has been attempted by implication.

10. On the other hand, the contention of Mr. D.K. Verma, the Learned Advocate for the O.P./Management is that it is an admitted fact that the workmen have neither appointment nor interview letter nor pay slip nor Identity Card from the management nor any proof of their continuous working, rather they were employees of the Jan Vikas Shramik Sahayog Sammiti Ltd., Further it has been contended by Mr. Verma, that in view of their admitted status as contractor workers, there stands not any case of termination of them, because the provision of Sec. 25 F of



the Industrial Dispute Act., 1947 applies to the employee appointed by the Management and that it can not be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master & servant is created between the principal employer and the contract labour as held in the case of Steel Authority of India Ltd., Vs. N.U. Water Front Workers (2001) LAB IC 3656(SC)(CB of 5 Judges). Moreover, the alleged workmen in lack of any proof of their continuous working are not entitled to regularization or any relief.

11. On putting the case of the workmen to the Test of Anvil, I find that and hold that the workmen were neither employees of the management, so there was no employer and employees relationship between them and that as per the eight Slips of the workmen's engagement (Extt. 1 series), out of total 36 workmen as per the list enclosed, the workmen under Sl. Nos. 1 to 17, 21, 22, 24, 25 and 32 to 36 as

contract labour worked only for one to six days in the year 1994 intermittently. The name of Umesh Kr. Mahato & ten other persons as named in the said slips are beyond the list of the workmen. Every ratio of ruling acts upon its own factum. The agreement of Mr. Mukherjee, Learned Sr. Counsel for the Union/workmen seems untenable as contrasted with that of Mr. Verma, Learned Advocate for the O.P./Management.

In the result, it is, in the terms of the reference, hereby.

### ORDERED

That the Award be and the same is passed that the demand of the Union before the Balihari Colliery under P.B. Area of M/o BCCL for re-instatement of S/Sri Pradeep Orang and 35 others as per the list enclosed, with full back wages in the service of the Company is quite unjustified and illegal. Hence, the concerned workmen are not entitled to any relief from the any date.

KISHORI RAM, Presiding Officer

### List of the workmen as per Ministry's file No. L-20012/351/99.IR(C-1) As Annexure

Sl.No.	Name	Father's Name	Address
1.	Sri Pradeep Orang	Sri Kalua Orang	At Kachi Balihri (Orang Ptti), PO: Kusunda, Distt. Dhanbad
2.	Sri Jitan Orang	Sri Lalu Orang	-do-
3.	Sri Gaya Ram Orang	Sri Mangal Orang	-do-
4.	Sri Joksen Orang	Sri Samar Orang	-do-
5.	Sri Charku Orang	Sri Nakul Orang	-do-
6.	Sri Vim Orang	Late Hari Ram Orang	-do-
7.	Sri Jitu Orang	Sri Gobardhan Orang	-do-
8.	Sri Madhu Orang	Sri Dugn Orang	-do-
9.	Sri Kamdeo Orang	Sri Jetu Orang	-do-
10.	Sri Durga Orang	Sri Prayag Orang	-do-
11.	Sri Naresh Orang	Sri Fagu Orang	-do-
12.	Sri Vim Soren Manjhi	Sri Fudan Manjhi	-do-
13.	Sri Mahenda Orang	Sri Bandhu Orang	-do-
14.	Sri Satya Naryan Orang	Sri Hari Orang	-do-
15.	Sri Rocket Orang	Sri Madhaw Orang	-do-
16.	Sri Birbal Orang	Sri Kudhu Orang	-do-
17.	Sri Suraj Orang	Sri Akalu Orang	-do-
18.	Sri Saheb Orang	Sri Asari Orang	-do-
19.	Sri Nidhram Orang	Sri Gopal Orang	-do-
20.	Sri Rajesh Orang	Sri Madhaw Orang	-do-
21.	Sri Kokil Mahato	Sri Jagtu Mahato	-do-
22.	Sri Girish Mahato	Sri Shankar Mahato	-do-
23.	Sri Yogendra Mahato	Sri Nunarik Mahto	-do-

Sl.No.	Name	Father's Name	Address
24.	Sri Jitu Pd. Mahato	Sri Kali Charan Mahato	-do-
25.	Sri Ram Nath Gope	Sri Guhi Gope	-do-
26.	Sri Suraj Kumar	Sri Vikhan Pd.	At South Balihari Colliery (Vishundhara) PO : Kusunda, Dhanbad
27.	Sri Sarajug Prasad	Late Ramchandra Mahato	-do-
28.	Sri Suresh Pd. Kushwaha	Sri R.L. Kushwaha	-do-
29.	Sri Jadish Singh	Late Bharat Singh	-do-
30.	Sri Beni Ram	Late Vikhai Das	-do-
31.	Sri Mrityunj Sarkar	Sri Sri B. M. Sarkar	At Balihari Colly, (Mevia), PO: Kusunda, Dhanbad
32.	Sri Saroj Kumar	Sri R.L. Kushwaha	At South Balihari Colly (Vishundhara), PO: Kusunda, Dhanbad.
33.	Sri Janardhan Paswan	Sri Mahadev Paswan	-do-
34.	Sri Umesh Singh	Sri A.N. Singh	-do-
35.	Sri Pramod Singh	Sri Harkit Singh	-do-
36.	Sri Rajesh Kumar	Sri Hardeo	-do-

नई दिल्ली, 20 नवम्बर, 2013

कांआ 2623.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 07 of 2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/11/2013 को प्राप्त हुआ था।

[सं० एल-20012/21/2009-आईआर (सी एम-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 20th November, 2013

**S.O. 2623.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 07/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of W.J. Area Moonidih of M/s BCCL, and their workmen, received by the Central Government on 20/11/2013.

[No. L-20012/21/2009-IR(CM-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10(1) (d)(2A) of I.D. Act, 1947

**Ref. No. 07 of 2009**

Employer in relation to the management of W.J. Area,  
M/S BCCI  
AND  
Their workmen

#### APPEARANCES:

For the employers:— Sri D.K. Verma, Advocate

For the Workman:— Sri S.C. Gour, Rep.

State:— Jharkhand.

Industry:—Coal

Dated 30/10/2013

#### AWARD

By order No. L-20012/21/2009/IR (CM-I) dt. 13.02.2009 the Central Government in the Ministry of Labour has, in exercise of power conferred by clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

#### SCHEDULE

"Whether the action of the management of Moonidih Project, W.J. Area of M/S BCCL in denying promotion as Assistant Foreman category "B" T&S to Shri Upendra Nath Roy, Assistant Foreman Gr. "C" T&S is justified and legal? (ii) To what relief is the workman concerned entitled and from which date?"

2. This Case is received from the Ministry on 25.02.2009. During the pendency of the case Sponsoring Union files a petition praying their in that the Union is not contesting the reference. It is felt that the dispute between parties is resolved. Hence "No dispute" award is passed communicate.

R.K. SARAN, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2013

**का०आ० 2624.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 42 of 2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/11/2013 को प्राप्त हुआ था।

[सं एल-20012/295/2003-आईआर (सी-I)]  
एम०के० सिंह, अनुभाग अधिकारी

New Delhi, the 20th November, 2013

**S.O. 2624.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s BCCL, and their workmen, received by the Central Government on 20/11/2013.

[No. L-20012/295/2003-IR(C-I)]

M.K. SINGH, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD.**

IN THE MATTER OF A REFERENCE/U/S 10(1) (D) (2A)  
OF I.D. ACT, 1947.

**REF. No. 42 OF 2004**

Employers in relation to the management of Bastacolla  
Colliery M/S BCCL

**AND**

Their workman.

**Present :** Sri Ranjan Kumar Saran,  
Presiding Officer

**Appearances :**

For the Employers : Sri U.N. Lall, Advocate

For the workman : Sri D. Mukherjee,  
Advocate

State : Jharkhand Industry : Coal

Dated. 29/10/2013

**AWARD**

By Order No.L-20012/295/2003-IR (C-I), dt. 26/04/2004, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal :

**SCHEDULE**

"Whether the action of the management of Bastacolla Colliery under Bastacolla Area of M/s BCCL, P.O- Jharia, Distt-Dhanbad in dismissing Sri Bhola Bhuia, Miner Loader from the service w.e.f. 01.01.1999 is proper and justified? if not, to what relief is the workman concerned entitled?"

2. The case is received from the Ministry of Labour on 14.05.2004. After receipt of the reference both parties are noticed. The Sponsoring Union files their written statement on 28.01.2005. The management also files their written statement-cum-rejoinder on 29.04.2005. Thereafter they submitted their documents.

3. The short point involved in the case is, the workman for his gross negligence and misconduct, has been dismissed by the management by invoking clause 28 of the standing order without conducting any enquiry whatsoever.

4. The counsel appeared on behalf of the workman submitted that clause 28 of standing order has already been declared ultravires by the Apex Court and the same has been accepted by many High Courts. One of such decision has been reported in AIR 1996 SC 1065.

5. Therefore the dismissal order passed by the management as per clause 28 of the standing orders can not stand dismissal of the workman is illegal.

6. Considering the facts and circumstance of this case, In the result, I hold that the action of the management of Bastacolla Colliery under Bastacolla Area of M/s. BCCL, P.O- Jharia, Distt-Dhanbad in dismissing Sri Bhola Bhuia, Miner Loader from the service w.e.f. 01.01.1999 is not legal and justified. Hence he be reinstated in service without any back wages whatsoever within 30 days after publication of the award.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2013

**का०आ० 2625.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, धनबाद के पंचाट (संदर्भ संख्या 11 of 2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/11/2013 को प्राप्त हुआ था।

[सं एल-20012/284/1999-आईआर (सी-I)]  
एम०के० सिंह, अनुभाग अधिकारी

New Delhi, the 20th November, 2013

**S.O. 2625.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2000) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No.

2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s BCCL, and their workmen, received by the Central Government on 20/11/2013.

[No. L-20012/284/1999-IR(C-I)]  
M. K. SINGH, Section Officer

**ANNEXURE**  
**BEFORE THE CENTRAL GOVERNMENT**  
**INDUSTRIAL TRIBUNAL (No. 2), AT DHANBAD**  
**PRESENT :**

Shri Kishori Ram, Presiding Officer.

In the matter of an Industrial Dispute under Section  
10(1)(d) of the I. D. Act, 1947.

**REFERENCE No. 11. OF 2000**

**PARTIES** : Shri Hemali Choudhary, (Workman)  
Vs. General Manager, CWS,  
Barkhakana of M/s CCL,  
Hazaribagh,

**APPEARANCES :**

On behalf of the : Mr. D. Mukherjee Ld. Advocate  
Workman

On behalf of the : Mr. D.K. Verma, Ld. Advocate  
Management

State: Jharkhand Industry : Coal  
Dated, Dhanbad, the 24th May, 2013.

**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/284/99(C-I) dt. 21.1.2000.

**SCHEDULE**

"Whether the action of the management of CWS, CCL, Barkhakana in dismissing Shri Hemali Choudhary Cat. I worker *w.e.f.* 25.9.98 from service is just, proper and legal? If not, to what relief is the workman entitled?"

2. The case of workman Hemali Choudhary as stated in his written statement is that he was originally appointed as a permanent workman against permanent vacancy at CWS, Barkhakana of M/s. CCL on 13.10.1995, after sponsoring his name through the Employment Exchange for it, and his performance and interview by the management. But the anti labour management issued him a false and frivolous charge sheet dt. 8.10.97 on the allegation of securing employment by furnishing wrong information under clauses 23(ii)(a), and 23 (ii)(r) of the Certified Standing Order' of the Company. Emphatically denying the charges, the workman replied to the chargesheet, submitting to the management, that he had neither committed any fraud, theft or dishonesty in respect of the Company's business and properly, nor given any wrong information regarding his

name, date of birth, percentage, qualification and previous experience at the time of employment. Though his reply was satisfactory, yet the management with ulterior motive to victimize him got held the irregular departmental enquiry through a biased Enquiry Officer, who completed it formally in utter violation of the principle of natural justice, as he was not given any opportunity to cross the management witness or to adduce evidence for his defence; besides, it was held on the dictates of some interested higher officials of the management to remove him from service. Despite unproved charges, he was dismissed on the basis of perverse finding of the Enquiry Officer. After seeing no alternative, workman raised the Industrial Dispute before ALCC, Hazaribagh but its failure in the conciliation resulted in the reference for an adjudication. Thus the action of the management in dismissing him from service *w.e.f.* 25.9.98 was neither legal nor justified, as the dismissal of the workman was by an unauthorized person. Moreover, his dismissal is harsh and disproportionated to the alleged misconduct.

3. It is remarkable to note that no rejoinder filed by the workman in this case.

4. Whereas the Opp./Management has contra pleaded case with categorical denials that workman Hemali Choudhary son of Sri Kiru Choudhary fraudulently managed to secure employment as Trainee Cat. I as per the appointment letter dt. 13.10.1995 in the C.C.L. under its Land Loser Scheme of the Piparwar Area, without approval of the Competent Authority, by giving false information regarding the relationship as nephew no a nominee with the owner of the Land bearing Khata No. 23, Plot Nos. 171,450,577 At village Karo, P.S. Kheredari, Distt: Hazaribagh which was acquired by the CCL for mining operation. But on subsequent enquiry, it was found that he was not the nephew of the owner of the said Lands, rather against the lands appointment as per the Appointment Letter dt. 21.9.1995 was already given in the C.C.L. to Muneshwar Mahato son of Baldeo Mahato. Thus, he was chargesheeted for his misconduct under clauses 23(ii)(b) and 23 (ii)(r) of the Certified Standing Order of the Company. The workman submitted his reply dt. 23.10.97. Sri A.K. Prasad, Chief Engineer M/s C.C.L. Ranchi as the Enquiry Officer appointed as per letter dt. 28.10.97 of the Management fairly and properly conducted the domestic enquiry without any prejudice and according to the principles of natural justice. In the enquiry, Sri U.K. Tripathi, Sr. Vigilance Officer, CCL, Ranchi as the Presenting Officer and the workman concerned with his co-worker had participated, and the workman was again given full opportunity for his defence, as his co-worker had cross examined the managements witness. At the enquiry, the Enquiry Officer submitted his enquiry report to the management holding therein the charges levelled against the workman to have been proved. Thereafter Management issued the second Show Cause notice to the workman, supplying the enquiry report to him. The workman submitted his written representation to



the management. After duly considering the representation of the workman, the management as per order dt. 23rd Sept., 1998 dismissed the workman which is legal and justified.

5. Further it is alleged by the Opp./Management that since the workman had fraudulently got his employment in M/s. CCL; he was punished with his dismissal after holding domestic enquiry, and his punishment is legal and justified. So he is not entitled to any relief.

The Opp./Management in its rejoinder has categorically denied the allegation of the workman, and stated that his reply/explanation was not satisfactory; the Enquiry Officer had given full opportunity to the workman for his defence.

### FINDING WITH REASONS

6. In the reference on consideration of the materials/evidence of MW1 Akhani Saileshwar Pd., for the Opp./Management and WW1 Hemali Choudhary, the workman for his own sake at the preliminary point about fairness of the enquiry, the Tribunal as per its Order No. 29, dt. 16.5.2011 held the domestic enquiry as fair, proper and in accordance with the principle of the natural justice.

Consequently, it came up for hearing the final argument for adjudication. It has been submitted by Mr. D. Mukherjee, the Ld. Counsel for the workman as per the written argument.

It has been argued as per the written argument in behalf of the workman that having all along protested his appointment under the Land Looser Scheme, he has claimed to have been appointed by the management through written test and oral interview on sponsoring his name by the Employment Exchange; but so far as his disqualification in the examination as stated in his alleged confessional statement is concerned, the management has failed to prove any document to that effect. Out of the eight rulings merely cited in his written argument, the workman filed and relied upon 2009LLR 252 SC(DB), Roop Singh Negi Vs. Punjab National Bank & Ors. The case relates to the dismissal of the appellant by the Disciplinary Authority as per an order. dt. 24.1.2011 without assigning any reason and without considering the contentions raised by the appellant, and overlooking the fact that he had been acquitted by the criminal Court; the management witness merely tendered the documents, and did not prove the contents thereof, yet the appellant was dismissed against the appellant after five years of the incident, so Their Lordship was pleased to direct reinstatement with full back wages, and held that departmental proceedings being a quasi judicial proceedings, the charges levelled against the delinquent Officer must be found to have been proved. (Paras 17, 18 and 19). But in the present case the management witnesses have proved the relevant documents, explaining what they are, and the Enquiry Officer

concerned appeared to have considered all the relevant facts/aspects as stated in his Enquiry Report (Ext. M. 6) which is based on sound reasoning. So the ratio decendi of the ruling being quite distinct from the facts of the case holds not good with it.

Further it has been argued in behalf of the workman that the management witness (MW1 Akhouri Saileshwari Prasad) has admitted as per the letter (dt. 13.10.95-Ext. M. 10) under the signature of the G.M. (Pers. & Admn.) the Appellant Authority, but he was dismissed by the G.M. of Barkakana Area, and that the dismissal of the workman by the G.M. (P & A), the Appellant Authority is illegal and void abinitio. But this argument for the workman being self contradicting and presumptive is untenable, so there is not such admission of the MW in his evidence about the dismissal of the workman.

On the other hand, the contention of Mr. D.K. Verma, Ld. Advocate for the Management is that on the proof of the charges under the Standing Order Clause 23 (ii) (1) and (r) against the workman, his dismissal from his service by the management for securing his employment in the C.C.L. on false information was quite proper and just in view of the gravity of his said misconduct.

7. On perusal and consideration of the materials, I find the following facts:

- (i) The workman had admitted that he has not any relationship with the Land or the Land Owner concerned, and he has received his appointment letter dt. 13.10.1995 (Ext. M. 10). But he claims to have been appointed on the basis of a written test at St. Xaviers' College whereas his alleged Admit Card (photocopy Ext. M5/11) unsigned by the Invigilator and in lack of mention about the CCL Guidelines as its enclosures (Ext. M5/13) for his examination Centre at St. Xavier's College, Ranchi (Purulia Road) stands out as his document of his impeachable features.
- (ii) Still the workman bases his claim on his aforesaid Appointment Letter No. PD/MD/Apptt./Land Loser/87-88/R-820 dt. 13.10.1995 (Ext. M. 10), which reads as such:

"Sri Hemali Choudhary S/o Khiru Choudhary, relationship with the owner of the Land acquired...."

Nephew..... Khata No. 23 Plot Nos. 371, 450, 577. Address: Village-Karo, P.S. & Circle Keredani, Distt: Hazaribagh C/o SO (P), Piparwar.

In terms of the argeement between the Management of CCL and the Land Owner of Village Karo, Block Keredaro, Distt: Hazaribag ... Subject to medical examination by the Medical Officer of the Company about your physical fitness and the

suitability for employment, you are hereby offered appointment Trainee Cat. (ITI) on an initial pay. Rs. 38.47 per day/ month in the pay scale of Rs. 38.47-070-48.27 plus usual allowances as may be admissible from time to time under National Coal Wages Agreement..."

- (iii) Whereas the appointment under the same plot of Land under the aforesaid scheme Khata & Plots No. of the same already offered to Muneshwar Mahato who was a bonafide claimant, and accordingly the appointment of aforesaid Muneshwar had got approval of the Higher Authority concerned for his lands as evident from the Para 9 at page No. 21 of the Enquiry report (Ext. M. 6).
- (iv) The workman remained beneficiary of his fraudulent employment under the Land Looser Scheme since his appointment *w.e.f.* 13.10.1995 (Ext. M. 10) until his admitted suspension from 18.6.1997 during the period of one year and 8 months, he did not fairly raise the issue of his employment based on his alleged unproved written test. He nowhere neither pleaded no brought fact of his success therein. All these facts manifest his malafide intention in illegally procuring his aforesaid employment under the Land Looser Scheme on false information as nephew of aforesaid Land Owner Baldeo Mahato.
- (v) The reply of the workman dt. 13.8.1998 (Ext. M. 8) to Show Cause Notice dt. 23rd July, 1998 (Ext. M. 7) with the copy 21 page Enquiry Report issued by the Management of the CCL refers not any new thing except his earlier statement made in his reply dt. 23.10.1997 (Ext. M. 3) to the charge sheet (Ext. M. 1).

On reappraisal of the materials on the case record, I find and hold that in view of the proved charges under clause No. 23 (ii) (b) and (r) of the Standing Order of the C.C.L. for fraud & dishonesty in connection with Company's business or property, and for giving false information at the time of employment, the order of dismissal from service as per letter No. 898 (CR) dt. 23rd Sept., 1998 (Ext. M. 9) of the G.M., CWS, CCL, Barkakana for his aforesaid misconduct appears to be legally quite justified. Therefore, the workman deserves no relief whatsoever under Sec. 11 A of the Industrial Dispute Act, 1947 in view of the gravity of his such misconducts.

Therefore, it is hereby, in terms of the reference.

#### ORDERED

That the Award be and the same is passed that the action of the management of CWS, CCL, Barkakana in dismissing Shri Hemali Choudhary, Cat. 1 Worker *w.e.f.*

25.9.98 from service is quite just, proper and legal. He deserves not any relief at all.

Let the copies one soft and one hard of the Award be sent to the Ministry of Labour & Employment, Government of India for information and publication of it in the Gazette of India.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2013

**कांआ 2626.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 122/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/11/2013 को प्राप्त हुआ था।

[सं० एल-20012/215/1994-आई आर (सी-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 20th November, 2013

**S.O. 2626.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 222/1994 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL, and their workmen, received by the Central Government on 20/11/2013.

[No. L-20012/215/1994-IR(C-1)]

M.K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

**Reference: No. 222/1994**

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947.

**Parties :** Employer in relation to the management of P.B. Area of M/s. BCCL

AND

Their workmen.

**Present :** Sri R.K. Saran, Presiding Officer

**Appearances:**

For the Employers : Shri Sri S.N. Ghosh, Adv.

For the workman. : None.

State : Jharkhand Industry: Coal  
Date 30.10.2013.

### AWARD

By order No. L 20012/215/94/IR (C-I) dated 31.8.94 the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

"Whether the action of the management of Balihari Colliery of M/S. BCCL, P.B. Area No. VII in dismissing S/Shri Shankar Hari, Jugal Hari and Jhariya Nayak from service *w.e.f.* 29.6.88 is justified? In not, what relief are the workman entitled to?"

2. After receipt of the reference both parties are noticed. But appearing for certain dates, none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence pass a No disputed Award is passed. Communicate to the Ministry.

R.K. SARAN, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2013

**का०आ० 2627.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 3/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/11/2013 को प्राप्त हुआ था।

[सं० एल-20012/27/2007-आई आर (सीएम-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 20th November, 2013

**S.O. 2627.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 3/2008 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Govindpur Area-III of M/s. BCCL, and their workmen, received by the Central Government on 20/11/2013.

[No.L-20012/27/2007-IR(CM-I)]

M.K. SINGH, Section Officer

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

**Reference: No. 3/2008**

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947.

**Parties :** Employer in relation to the management of Kooridih Colliery Block-IV of M/s. BCCL

AND

Their workmen.

**Present :** Sri R.K. Saran, Presiding Officer

### Appearances:

For the Employers : Shri U.N. Lal, Adv.

For the workman. : None.

State : Jharkhand

Industry: Coal

Date 31.10.2013.

### AWARD

By order No. L-20012/27/2007IR (CM-I) dated 18.2.2008 the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

"Whether the demand of the Bhujan Mazdoor Union from the Management of Kooridih colliery Block-IV of M/s. BCCL to give Shri Shristy Rai, Explosive carrier, fitment if basic pay of Rs. 306.64 per day in justified? Is so, to what relief is the concerned workman entitled and from what date?"

2. After receipt of the reference both parties are noticed. But appearing for certain dates, none appears subsequently. Case remain pending Union secretary files a petition stating that union is not interested to contest the case. It is felt that the disputes between the parties have been resolved in the meantime. Hence pass a No disputed Award is passed. Communicate to the Ministry.

R.K. SARAN, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2013

**का०आ० 2628.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टिस्को के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट

औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, धनबाद के पंचाट (संदर्भ संख्या 26 of 2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.11.2013 को प्राप्त हुआ था।

[सं० एल-20012/10/2001-आईआर (सी-I)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 20th November, 2013

**S.O. 2628.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 26/2002 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of TISCO and their workmen, received by the Central Government on 20.11.2013.

[No. L-20012/10/2001-IR(C-I)]  
M.K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2), AT DHANBAD

#### PRESENT :

SHRI KISHORI RAM, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

#### REFERENCE No. 26 of 2002.

**PARTIES** : Vice President,  
Mazdoor Sangasthan Samitte,  
Katrasgarh, Dhanbad  
Vs. G.M., (Collieries), Tata Iron & Steel  
Co. Ltd. (TISCO), Jamadoba, Dhanbad

#### Appearances:

On behalf of the : Mr. S.N. Goswami,  
Workman : Ld. Advocate  
On behalf of : Mr. D.K. Verma, Ld. Advocate  
the Management  
State : Jharkhand Industry : Coal

Dated, Dhanbad, the 25th October, 2013

#### AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec. 10(1)(d) of I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/10/2001-IR(C-I) dt. 19.03.2002.

#### SCHEDULE

"Whether the demand of Mazdoor Sangathan Samittee from the management of Sijua Colliery of M/s. TISCO, the benefit of employment scheme to Sri Kamal Ram son of Shri Mukund Ram Kahar after retirement of Sri Mukund Ram Kahar is legal and justified? If so, what relief his dependent son is entitled to?

2. The case of the workman as stated in the Written statement by him that workman Mukund Ram working all along as General Mazdoor since his appointment as Mazdoor Cat. I from 13.07.1946 was a permanent employee of Sijua Colliery of Tata Steel Company Ltd. (Tisco), who after completion of his 41 years continuous service superannuated on 13.07.1987. He was all along a member of the CMPF A/c No. D/66085, *w.e.f.* 13.07.1946 till his retirement. His dates of appointment and superannuation have been upheld as also in the P.S. Appeal (10) 98 filed by the Management dismissed against his Gratuity Case No. 36/8/91E 3. As per the provisions of the Company, out of the names of maximum two dependent sons (1) Rajeshwar Ram and (2) Kamal Ram as enrolled in the E.D.R. (Employee Dependent Register) on the application, following the completion of his 15 years continuous satisfactory service and on the strength of his 30 years of service, one employment was given to his first son, but even after the completion of his 40 years service, his second choice for second dependent son, who is legally entitled employment, should have been given. At the several representations of the workman to the management for employment of his second dependent son on the strength of more than 40 years, but of no effect. At last, the dispute as per the Order dt. 4.2.2002 of the Hon'ble High Court, Ranchi, in W.P.L. No. 912/2002 has been referred for an adjudication. The other employees have been given benefit of it. The demand of the Union for it is bonafide and justified, whereas the action of the management in not providing an employment to Sri Kamal Ram, the second dependent son of the Ex-workman unjustified amounting to breach of contract of the service conditions and violations of natural justice.

3. Whereas the contra case of the O.P./Management with categorical denials is that the present reference is not maintainable in law and in facts, as the written statement has been filed by the workman in the reference which was raised by the union. Workman Mukund Ram was a retired employee, so he was not a workman as defined U/S 25 of the Industrial Tribunal Act, 1947. He had no locus standi to file a written statement on behalf of the Union, who had no locus standi to raise the I.D. in respect of any ex-serviceman. The workman was superannuated from service of the Company, *w.e.f.* 13.07.1987 after putting his 38 years 3 months service. His one dependent son Rajeshwar Ram was employed on his service strength under the employment procedure of the management and he is working at Sijua Colliery of the Company. There is no



provision for providing an employment to the dependent of a retired employee.

4. Categorically denying the allegations of the workman, the O.P./Management is its rejoinder has stated that as per Service Sheet, the appointment date of the workman is 11.4.1949, and he superannuated on 13.07.1987; as such he rendered his service for 38 years and 03 months only. Neither the workman's second dependent is entitled to second employment nor can he claim it as a matter of right. Besides the reduction of the workforce with the mechanization of the Mining as result of technological advancement, consequently introduction of Voluntary Retirement Scheme, has reduced the scope of employment in different schemes.

#### FINDING WITH REASONS

5. In the instant reference, WWI Kamal Ram son of Late Workman Mukund Ram Kahar on his behalf, and MWI Dinesh Kumar Sharma, Head Clerk of the G.M.'s Office, Jamadoba for the O.P./Management have been examined respectively.

Mr. S.N. Goswami, Ld. Advocate that WWI Kamal Ram as the second dependent son of the Late workman has fully established his name has been enrolled in the E.D. Register in 1980 as per the Order of the management (Ext. W. 1) after completion of 40 years continuous service of his father worker according to his date of his appointment 13.6.1946 in place of 13.4.49 as upheld by the Controlling Authority under P.G. Act (Payment of Gratuity Act) (Ext. W. 2), yet the management did not issue for his employment.

Whereas the contention of Mr. D.K. Verma, Ld. Counsel for the O.P./Management is that the workman was firstly appointed on 13.7.1946, but was discharged on 27.07.1946, thereafter he was again employed on 11.4.1949 and superannuated in the year 1987 on length of his 38 years of service, his dependent Rajeshwar Ram got an employment and is still working in Sijua; as such the employment procedure of the management (Ext. M. 2) does not provide for employment of second dependent of the retired employee based on his representations which were accordingly regretted as the Management's Official letters dated 5.11.1987, 10.03.1988 and 13.07.1988 (Ext. M. 3 series). Further Mr. Verma submitted that earlier first son of the workman was already employed in the company as per the rules of it, and there was re-employment of the workman since 1949 (Ext. M. 1, the Service Panel of workman Mukund Ram Kahar), so the claim of the workman for the second employment of his another dependent son is not justified.

6. On the perusal and consideration of the materials as adduced by both the parties, I find that the workman has no direct proof of his continuity of his service for 41 years as contrasted with his factual 38 years service since his employment on 11.4.1949 as per his Service Record (Ext. M. 1). The first employment of his son Rajeshwar Ram

in the Company on the strength of his 30 years as per rules of the Company is beyond dispute. So far as the claim of the workman Mukund Ram Kahar for earlier continuity of service from 13.7.1946 to 10.04.1949 as dealt with in the Order dt. 27.02.1998 (Ext. W. 2) which related to his earlier gratuity for it is concerned. The Management as per its three letters (Ext. M. 3 series) had clearly responded that as per his Service Record, he was initially employed on 13.07.1946 and discharged on 20.07.1946; thereafter he was re-employed on 11.04.1949 and superannuated on 13.07.1987; as such he had a break in service; moreover, Sri Rajeshwar Ram one of his (workman's) sons has already been employed and working on the strength of his service; so he can not put the Order of the Controlling Authority in Gratuity matter as a base for continuity of his earlier breaking in service.

7. So far maintainability of the Industrial Dispute is concerned, the O.P./Management has irrebutable statement and proof that the workman has along filed his written statement but not by the Union concerned. Hence, the I.D. also appears to be unmaintainable in the eye of Law.

8. In result, it is, in the terms of the reference hereby.

#### ORDERED

That the Award be and the same is passed that the demand of the Mazoor Santhan Sangathan from the management of TISCO, Sijua Colliery for providing the benefit of the Service Scheme to Sri Kamal Ram son of the workman Mukund Ram Kahar after his superannuation is unjust and illegal. Hence, the aforesaid dependent son of the workman is not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2013

कांआ 2629.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 20 of 1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.11.2013 को प्राप्त हुआ था।

[सं एल-20012/213/1991-आईआर (सी-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 20th November, 2013

S.O. 2629.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 20/1992 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial

dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 20.11.2013.

[No. L-20012/213/1991-IR(C-I)]  
M.K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 1), DHANBAD

#### Reference No. 20/1992

In the matter of reference U/S 10(1)(d) (2A) of I.D. Act, 1947

**Parties :** Employer in relation to the management of  
Kankanee Colliery of M/s. BCCL

AND

Their Workmen

**Present :** Sri R.K. SARAN,  
Presiding Officer

#### Appearances:

For the Employers : None  
For the Workman : None  
State : Jharkhand  
Industry : Coal

Dated 31.10.2013

#### AWARD

By order No. L-20012/213/1991-IR (C-I) dated 22.1.92, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) of sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

"Whether the action of the management of Kankanee Colliery of M/s. BCCL, in denying employment to Sh. Nawal Kishor Singh son-in-law of Smt. Renu Bala Sarkar under VRS is justified? If not, to what relief he is entitled?"

2. After receipt of the reference both parties are noticed. But appearing for certain dates, none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence pass a No disputed Award is passed. Communicate to the Ministry.

R.K. SARAN, Presiding Officer

नई दिल्ली, 25 नवम्बर, 2013

**का०आ० 2630.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के

प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, धनबाद के पंचाट (संदर्भ संख्या 267/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/11/2013 को प्राप्त हुआ था।

[सं० एल-20012/328/2001-आईआर (सी-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 25th November, 2013

**S.O. 2630.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 267/2001) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of BCCL and their workmen, received by the Central Government on 25/11/2013.

[No. L-20012/328/2001-IR (C-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

**Present:** SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

#### Reference No. 267 of 2001

**Parties :** The Vice President, Mazdoor Sangthan  
Samittee, Katras, Dhanbad

Vs.

General Manager, Katras Area of  
M/s. BCCL, Dhanbad

#### Appearances:

On behalf of the : Mr. S.N. Goswami, Ld. Advocate  
workman/Union

On behalf of the : Mr. D.K. Verma, Ld. Advocate  
Management

State : Jharkhand Industry : Coal

Dhanbad, dated the 22nd Oct., 2013

#### AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on then under Sec. 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/328/2001-IR(C-I) dt. 21.9.2001.

**SCHEDULE**

"Whether the demand of the Mazdoor Sangthan Samittee for regularization of Sri Tezo Gope in Clerical Grade-II from the management of Katras Project of M/s. BCCL is justified? If so, to what relief is the concerned workmen entitled and from what date?"

2. Neither any representative for the Mazdoor Sangthan Samittee nor workman Tezo Gope appeared but Mr. D.K. Verma, the Learned Advocate for the O.P./ Management of Katras Area of M/s. BCCL present for argument.

On perusal of the case record, I find that workman Tezo Gope appears to have been regularized in Clerk Gr.-III with pay protection as per the Letter No. BCCL:GM (P & IR); Secy.: 09/1523 dt. 28.02.2009 of the General Manager (P & IR), Koyla Bhawan, Dhanbad. Besides it is apparent from the record that neither the Union Representative nor the workman appears to be interested in this case at the eleventh hours for final adjudication. Under such circumstances, the case is closed and accordingly an Award of No Industrial Dispute is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 25 नवम्बर, 2013

का०आ० 2631.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इ सी एल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, धनबाद के पंचाट (संदर्भ संख्या 125/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/11/2013 को प्राप्त हुआ था।

[सं० एल-20012/156/2003-आईआर (सी-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 25th November, 2013

**S.O. 2631.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 125/2003) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of ECL and their workmen, received by the Central Government on 25/11/2013.

[No. L-20012/156/2003-IR (C-I)]

M.K. SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD**

**Present :** Shri KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

**REFERENCE NO. 125 OF 2003.**

**PARTIES :** Br. President, Bihar Colliery Kamgar Union, Kusunda, Dhanbad Vs. G.M., Mugma Area of M/s. ECL, Dhanbad.

**APPEARANCES:**

On behalf of the : Mr. D.C. Mahato, Ld. Advocate  
workman

On behalf of the : Mr. D.K. Verma, Ld. Advocate  
Management

State : Jharkhand Industry : Coal

Dhanbad, dated the 28th Oct., 2013

**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on then under Sec. 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/156/2003-IR(C-I) dt. 10.11.2003.

**SCHEDULE**

"Whether the action of the management of Chapapur Colliery under Mugma Area of M/s. ECL in dismissing Sri Paddo Mahato w.e.f. 11.12.2002 is justified? If not, to what relief is the concerned workman entitled?"

2. The case of the sponsoring Bihar Colliery Kamgar Union, Kusunda for workman Paddo Mahato is that he was a permanent employee of the ECL. He was issued a charge sheet dt. 12.7./7.9.2001. He replied the charge sheet on 11.10.2001, producing the Medical Certificate of Nirmala Leprosy Hospital, Govindpur, Dhanbad and requested to allow him to do so, and illegally stopped him from duty w.e.f. 11.10.2001. During the course of the domestic enquiry conducted in a single day on 28.09.2002 in English even though, he was illiterate, and after completion of the enquiry, the workman waited for two months for resumption of duty, the management did not take any action in that regard, resulting in his unreasoned sitting idle. He got raised the I.D. by the Union before the ALC @, Dhanbad on 18.12.2002 for payment of Subsistence Allowance for remaining idle, though the I.D. ended in failure. Meanwhile, the workman received the Dismissal Order through a Registered Post on 28.12.2002. He was dismissed during the conciliation proceeding so his dismissal was in violation of Sec. 33 of the I.D. Act, 1947.

3. Further it is alleged in his behalf that no second Show Cause Notice was served upon him. His justification

for his absence on account of sufficient cause, *i.e.*, treatment of his leprosy, *w.e.f.*, 17.02.2001 to 20.09.2001 as per the Medical Certificate was also unrecorded by the Enquiry Officer in course of the Enquiry. He was not given any opportunity in it. The domestic enquiry was illegally, motivatedly conducted against the principle of natural justice. There was no proof of the charges. The Enquiry Officer had roled both as the Management Representative and the E.O. in the enquiry. The dismissal order of the workman was passed by the incompetent Authority. The enquiry for its report bearing the signature of the management Representative is violated. The workman was not asked to take the help of his co-worker in the enquiry. Thus; the action of the management in dismissing the workman was most unjustified.

4. In rejoinder in Addl. One under the signature of an Advocate on behalf of the workman, categorically all the allegations of the management have been denied. Irrespective of the repetitions, it is stated that the charge sheet and the enquiry proceeding ought to have been in the language known to the illiterate workman. The particulars of absentism concerning with the workman were never brought forward during the enquiry, so his absentism for the years 1999, 2000 and 2001 is beyond the present I.D. The Dismissal Order devoids of its cause is unjustified, hence illegal. Hence, the reinstatement of the workman with full back wages, *w.e.f.*, 11.10.2001 is also justified.

5. Whereas the contra pleaded case of the O.P./management is that the workman was chargesheeted on 1.10.2001 for his admitted unauthorized absence from his duty in violation of the Standing Order; the domestic enquiry was fairly held in which he had participated on 28.09.2002 but he never raised an objection to it, rather after pleading his guilt, he requested to let him join his duty, but thereafter, he did not turn up in the enquiry on 10.12.2001 and 9.9.2002. In case of willful absence of the workman from duty and not any claim by him for subsistence allowance, there arises no fact of a forced idleness upon him nor payment for subsistence allowance. The workman failed to examine the Doctor in order to show his long suffering from leprosy as per his Medical Certificate in the enquiry. The enquiry proceeding though recorded in English was yet explained in Hindi to the workman, who neither produced any Medical Certificate nor reported for his duty at the request of the management even after his chargesheet. The previous record of the workman's Attendance for 40,92, Nil and Nil day in the years 1999, 2000 to 2002 respectively reveal his uninterestedness with the employment. Besides, despite many chargesheets having been issued to the workman, he was allowed to join his duty after notes of warning. The I.D. was initially raised for subsistence allowance, lateron, converted into the demand for reinstatement on 6.3.2003; and again extended to payment of back wages on 26.3.2003.

Further it is alleged as the relevant facts in the Addl. Written statement on behalf of the O.P./management that

for unauthorized absence of the workman from duty, *w.e.f.* 17.2.2001, the charge sheet dt. 12.09.2001 issued by the management was served upon him by the Regd. Post. His reply to it received by the management on 11.10.2001 was found unsatisfactory, so the management appointed the Enquiry Officer to conduct the domestic enquiry in accordance with the rules of natural justice. At the notice of the enquiry, the enquiry was held in presence of the workman; thereafter the Enquiry Officer after due and fair enquiry, held the workman guilty of the charges. Then the management dismissed the workman as per the dismissal of the workman was legal and justified. It has urged to allow the management to adduce evidence to prove the charges in case of holding the enquiry as unfair.

#### FINDINGS WITH REASONS

7. In the instant case, after hearing the O.P./Management and the workman at preliminary issue about the domestic enquiry, the Tribunal as per Order No. 35 dt. 09.10.2013 held the domestic enquiry fair and proper and in accordance with the principle of natural justice. At the death of workman Paddo Mahato on 09.10.2000 during the pendency of the case Smt. Pouria Mahato (54 years old) has been substituted in his place as per the Order No. 24 dt. 10.05.2011 of the Tribunal.

8. Thereafter, the case came up directly at the point of hearing the final arguments on merits. Mr. D.C. Mahato, the Learned Counsel for the workman as per his written argument submits that workman Paddo Mahato was a permanent employee as the Driller (U.G.) at Chapapur Colliery of the ECL; that the despite having fully justified his absence from duty from 17.02.2001 due to his illness of leprosy by the workman in his reply, and statement in the enquiry the management without proof of the charge of absentism or examination of witness illegally dismissed the workman which was illegal and unjust in the nature of his reasonable absence, as so second show cause was issued to the workman.

Whereas Mr. D.K. Verma, Learned Counsel for the O.P./Management has contended that since the workman was a habitual absentee as per his previous service record, so the dismissal of the workman was quite just and proportionate to the nature of his absentism.

9. On perusal of the materials made available on the case record, I find that the existence of the deceased workman as a permanent employee of the management is indisputable. The dismissal of the workman (deceased now) for his absentism, which was properly justified by him as evident from the Enquiry Proceeding and the Enquiry Report (Ext. M. 5 & M. 6 respectively) appears to be too harsh and disproportionate to the nature of the charge of absentism and the same unproved. The dismissal of the workman by the G.M., Appellant Authority also liable to be set aside without show cause as held in the case of Kumaon Mandal Vikash Bigam Ltd., Vs. Girja Shankar Pant, 2001



LIC11: AIR 2001 SC 24. Since the workman is no more; were he alive, he would have deserved/been entitled to the relief under Sec. 11 A of the I.D. Act, 1947-*i.e.*, in reinstatement in his service with full back wages.

In result, it, in the terms of the reference, hereby.

### ORDER

That the action of the management of Chapapur Colliery under Mugma Area of M/s. ECL in dismissing Sri Paddo Mahato (now Dead) w.e.f. 11.12.2002 is/was totally unjustified. Hence the workman, if he was alive, would have been entitled to his re-instatement with full back wages, but now his substituted widow Paddo Mahato shall be entitled to all the financial benefits of her deceased husband accordingly.

KISHORI RAM, Presiding Officer

नई दिल्ली, 27 नवम्बर, 2013

का०आ० 2632.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुंबई पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुंबई के पंचाट (के० सं० औ० अ०-2/4-2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.11.2013 को प्राप्त हुआ था।

[सं० एल-31011/8/2007-आई आर (बी-II)]  
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 27th November, 2013

**S.O. 2632.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-2/4 of 2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of The Chairman, Mumbai Port Trust and their workmen, received by the Central Government on 27/11/2013.

[No. L-31011/8/2007-IR (B-II)]  
RAVI KUMAR, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 2, MUMBAI

#### PRESENT

K.B. KATAKE

Presiding Officer

REFERENCE NO. CGIT-2/4 of 2008

#### EMPLOYERS IN RELATION TO THE MANAGEMENT OF MUMBAI PORT TRUST

The Chairman  
Mumbai Port Trust  
Port Bhavan, S.V. Marg  
Ballard Estate  
Mumbai-400 001.

AND

#### THEIR WORKMEN

Shri Pramod Mankar  
Nandini Co-op., Housing Society  
34/A/003  
Shivaji Nagar  
Pokharan Road No. 1  
Thane (W)

#### Appearances :

For the Employer : Mr. Umesh Nabar,  
Advocate  
For the Workman : Mr. J. H. Sawant,  
Advocate.

Mumbai, dated the 2nd September, 2013

#### AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-31011/8/2007-IR (B-II), dated 17.12.2007 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of Mumbai Port Trust in imposing the penalty of reduction of pension of Shri Pramod Bhimrao Mankar, Retired Assistant Shed Superintendent Docks to the minimum pension of Rs. 1850 per month plus the admissible periodic relief *vide* order dated 31/01/2005 is legal and just? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, notices were issued to both the parties. In response to the notice, second party workman filed his statement of claim at Ex-7. According to the second party he had completed 22 years of service for the first party and he has been relieved from services by first party by way of voluntary retirement w.e.f. 01/03/2001. The workman was entitled to receive all the benefits including pension, gratuity etc. He was entitled to get pension @ 2,793 w.e.f. 01/03/2001 and Rs. 3,969 w.e.f. 01/08/2003. The workman was paid the pension at the said rate belatedly. The Dy. Chairman of the first party by his order dt. 31/01/2005 imposed penalty by way of disciplinary action and reduced the pension of the workman to the minimum @ Rs. 1,850 p.m. plus admission periodical relief.

The said order of Dy. Chairman is illegal, unjustified. The charge sheet was issued to the second party on the basis of charges levelled against him in the criminal case wherein the workman was acquitted by the court. The inquiry was not fair and proper as joint inquiry was initiated against the second party without any sanction of competent authority. There was violation of principal of natural justice. The findings of the Inquiry Officer are perverse. Thus no penalty can be imposed upon the second party. The penalty imposed was bad in law and not sustainable under the regulation. Therefore second party has raised industrial dispute. As the conciliation failed ALC (C) submitted his report the Labour Ministry sent the reference to this Tribunal. The workman therefore prays that the penalty of reduction of his pension to the minimum by order of Dy. Chairman be declared illegal, unjustified and the said order be set aside and first party be directed to pay full pension to the second party with arrears and interest thereon @ 18% and the cost of the proceeding.

3. The first party resisted the statement of claim *vide* its written statement at Ex-8. They have denied all the allegations and contents of the second party in the statement of claim. According to them the claim of the second party is misconceived and not maintainable. The second party had intentionally violated the rules of discipline repeatedly. It amounts to total disregard in performing his duties the workman was terminated for the act of misconduct under regulation No.3 (1) (1A) (i), (vii) (viii) (ix) & (xii) of the MbPT Employees (Conduct) Regulations, 1976 for his act of removing two imported white Land Cruiser Motor cars from imported containers by break opening seal and replacing new cars with old and junk cars in collusion and connivance with two others for which he was also charged and tried under Indian Penal Code. Domestic inquiry was initiated against him. The workman was given reasonable and proper opportunity to defend the charges levelled against him. The charges were found proved. On the basis of report of Inquiry Officer and findings therein the workman was held guilty. However considering his past service record lesser punishment of reduction of pension was imposed on the workman. The second party workman had obtained voluntary retirement on 01/03/2001 before the act of misconduct came into light. The action of the first party is legal and justified. Therefore the reference is not maintainable. They have denied all the contents in statement of claim and prayed that the reference be dismissed with cost.

4. The second party filed his rejoinder at Ex-9. He denied the contents in the written statement and reiterated that he was acquitted in the criminal case. Therefore the punishment imposed by the first party is illegal and unjustified.

5. Following are the re-casted issues for my determination. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether the inquiry is fair and proper?	No.
2.	If yes, whether the findings of the Inquiry Officer are perverse?	No.
3.	If not, whether the punishment of reduction of pension to the minimum pension of Rs. 1850 p.m. is proportionate to the proved misconduct?	As per order below.
4.	What relief the worker is entitled to?	As per order below.
5.	What order?	As per order below.

### REASONS

Issues Nos. 1 & 2:—

6. In the case at hand legality of the inquiry was challenged on the following grounds: (1) The inquiry was initiated against the workman after his retirement and no such inquiry can be initiated against him after his retirement. (2) Joint inquiry was conducted without any sanction of the competent authority. (3) There was violation of Principles of Natural Justice while conducting the inquiry. (4) The punishment was not imposed by the competent authority as prescribed under Bombay Port Trust Pension Regulations. I would like to discuss these points categorically.

7. In this respect the Ld. Adv. for the first party pointed out that though the inquiry was initiated after retirement of the workman, there is no total bar to initiate departmental inquiry. Such a departmental inquiry can very well be initiated with sanction of the Trustees as contemplated under Rule 8 (b) (i) of Bombay Port Trust Pension Regulations. The inquiry was initiated within four years from the date of the alleged misconduct. Therefore inquiry cannot be called illegal on this count. In this respect I would like to point out the reply of the workman to the charge sheet. It is at Ex-15. In para 3 of the reply it is contended that "In the memorandum under reply you have stated that these disciplinary proceedings have been initiated against me in pursuance to the sanction accorded by the Board of trustees as per MbPT Pension Rules No. 7 (i) 8 b (i) & (ii)." It indicates that the inquiry was initiated with sanction of the Trustees and it was so communicated to the workman. The argument therefore is devoid of merit that no inquiry can be initiated against pensioner. So also it cannot be said that inquiry was without sanction and on these counts inquiry cannot be called illegal.

8. Next objection raised on behalf of the second party is that the inquiry officer has violated the Principles of Natural Justice. According to the workman he was not given sufficient opportunity to cross examine some of the witnesses and to defend himself. In this respect the Ld. Adv. for the first party submitted that fair and sufficient

opportunity was given to the workman to defend himself. He attended the proceedings. However on some dates inspite of notice the wilfully remained absent. In the circumstances Ld. Adv. for the first party rightly submitted that, inspite of notice and knowledge of the date if the workman wilfully remained absent before the inquiry officer, it cannot be called violation of principles of natural justice.

9. The other objection to the inquiry proceedings the Ld. Adv. for the second party pointed out that, the Traffic Manager of Port Trust has passed the order and withheld the part amount of pension of the workman as a disciplinary authority. According to the Ld. Adv. the Traffic Manager has no authority to impose the punishment as the second party workman is retired employee of the first party. The Ld. Adv. referred to Rule 8 of the aforesaid Pension Rules. As per this Rule 8 "The Trustee further reserved the right of withholding of pension or any part of it whether permanently or for a specific period and the right of ordering the recovery from pension of the whole or part of any pecuniary loss caused to the Trustee or in departmental proceedings the pensioner is found guilty of grave misconduct of negligence during the period of his service including service rendered upon re employment after retirement." It indicates that the power is with the Trustees to withhold or withdraw the pension or any part of it. In the circumstances the Ld. Adv. submitted that the order passed by Traffic Manager withholding the part of the pension of the workman, in the capacity of disciplinary authority is void and illegal. In support of his argument the Ld. Adv. resorted to Calcutta High Court ruling in Hirapada Das V/s. Calcutta Port Trust & Ors. 2011 III CLR 792. In that case pensionary benefits of the retired employee were withdrawn by an order passed by Financial Advisor and Chief Accounts Officer. The Hon'ble Court in that case held that said officer was not competent to pass the said order. It was exclusive jurisdiction to be exercised by the Chairman. Therefore Hon'ble Court held that the impugned order passed by Financial Advisor and Chief Accounts Officer being without jurisdiction is a nullity.

10. In the case at hand as per Rule 8, only Trustees can withhold the pension or part thereof and the order passed by Traffic Manager withholding part of pension is null and void.

11. Further more the Ld. Adv. for the second party submitted that when the inquiry was initiated against the workman he was retired and was entitled to get the amount of his gratuity, pension and other retirement benefits. However till the inquiry was concluded the second party was not paid the gratuity, pension and other retirement benefits. MW-1 Mr. T.V. Dangil has admitted the same in his cross examination at Ex-24 that, when the inquiry was concluded second party was not paid the amount of gratuity, pension and other retirement benefits. It appears that the said retirement benefits were with held by the first party illegally. In the circumstances I come to the conclusion

that though the charges were explained to the workman and witnesses were examined in his presence and he was given opportunity to cross examine them and to lead his evidence, however that is not sufficient to hold the inquiry legal and proper. In the case at hand as the order of withholding part of pension was not passed by the competent authority, I hold that the inquiry is nor fair and proper.

Issue No.2:—

12. In respect of findings of Inquiry officer the Ld. Adv. for the second party mainly relied upon the fact of acquittal of the workman in the criminal case filed against him in respect of the same misconduct. In this respect I would like to point out that the law on the point is well settled that, the standard of proof in criminal trial is altogether different than the standard of proof in departmental inquiry. In criminal trial charges are required to be proved beyond reasonable doubts whereas in departmental inquiry, mere preponderance of probability suffices the purpose. On the point Apex Court ruling can be resorted to in Suresh Pathrela V/s. Orient Bank of Commerce 2007 2 SCT 715 wherein Apex Court observed that:

"It is well settled principle of law that the yardstick and standard of proof in criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in departmental proceeding is preponderance of probability."

13. In the light of the ratio laid down in the above ruling it is quite clear that though a person is acquitted in a criminal case, it has no effect on the departmental inquiry and on the count of acquittal, findings of the Inquiry Officer cannot be called perverse. Accordingly I decide this issue no. 2 in the negative.

Issue No. 3 & 4:—

14. In the light of above discussions specially the findings on issue no. 1 above, I come to the conclusion that, the punishment of withholding part of pension imposed upon the workman by Traffic Manager was without jurisdiction. Thus the said order deserves to be quashed and set aside. There is also no scope in allowing the first party to lead their evidence and to prove the charges as the inquiry is otherwise fair and proper. Issues nos. 3 & 4 are decided accordingly. In this backdrop I allow the reference and proceed to pass the following order:

#### ORDER

- (i) The reference is allowed with no order as to cost.
- (ii) The punishment of withholding part of pension of the workman and reducing the pension to the minimum is hereby set aside.

- (iii) The first party is directed to pay the arrears to the workman with interest thereon @ 9% p.a. from the date of the reference till the date of payment of the amount.

Date: 02.09.2013

K.B. KATAKE, Presiding Officer

नई दिल्ली, 28 नवम्बर, 2013

**का.आ. 2633.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनाइटेड बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नई दिल्ली, 1 के पंचाट (120/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.11.2013 को प्राप्त हुआ था।

[सं एल-12012/52/2013-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 28th November, 2013

**S.O. 2633.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 120/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of United Bank of India, and their workmen, received by the Central Government on 28.11.2013.

[No. L-12012/52/2013-IR(B-II)]

RAVI KUMAR, Section Officer

#### ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL  
NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI**

**I.D. No. 120/2013**

Shri Jitender Samaniya  
S/o Sh. Chander Pal,  
R/o D-89, Street No. 2,  
Peramhans Vihar, Loni,  
Ghaziabad, U.P.

...Workman

*Versus*

1. M/s. United Bank of India  
Barakhamba Road, Canaught Place,  
New Delhi-110001.

2. The Manager,  
Pro-interactive Service Pvt. Ltd.,  
31-32 Begampur Park, Shivalik,  
Malaviya Nagar, New Delhi-110017.

...Management

#### AWARD

An Automated Teller Machine operator was appointed by Pro-Interactive Services India Ltd. (hereinafter referred to as the contractor). The ATM operator, namely, Shri Jitender Samania was deputed to work in East Delhi District, Delhi, where he was supposed to attend to complaints relating to ATMs installed in that area by United Bank of India (hereinafter referred to as the principal employer). From September to December 2011, some of the customers could not withdraw their desired money from the ATMs, but the amounts were deducted from their respective accounts. A sum of Rs. 82,200.00, deducted from accounts of various customers but could not be withdrawn from ATM in the period referred above, was embezzled by the ATM Operator, in connivance with his colleague, namely, Shri Vishnu Rana. The ATM operator did not submit JP Log report, wherein details of entire transactions were to be displayed, with a view to conceal his misdeeds. When facts were enquired from him, he confessed his guilt. Subsequently, he absconded from his duties. A report at Police Station Mukherjee Nagar was lodged against him and his associate. After a long gap of time, the ATM operator raised a dispute before the Conciliation Officer, claiming that the contractor had terminated his services in an illegal manner. Since the claim was contested by the contractor, conciliation proceedings ended into a failure. The Conciliation Officer submitted his failure report to the appropriate Government, who in turn referred the dispute to this Tribunal for adjudication *vide* order No. L-12012/52/2013-IR(B-II), New Delhi dated 13.08.2013, with following terms:

"Whether services of the workman, Shri Jitender Samania, S/o Shri Chander Pal, while working as ATM operator for United Bank of India have been illegally and/or unjustifiably terminated by the management of Pro-Interactive Service India Pvt. Ltd.? If yes, what relief the workman is entitled to and what directions are necessary in this respect?"

2. Instead of filing claim statement, the claimant appeared before the Tribunal along with Shri Naresh Kumar Joshi, authorized representative of the contractor and claimed to have settled his grievances with his employer. His statement on oath was recorded, contents of which are reproduced below:

"I have settled my grievances with M/s. Pro Interactive Services Ltd. for a sum of Rs. 12,200.00, paid to me before this Tribunal. Nothing remains due to me from my aforesaid employer towards



wages, notice pay, retrenchment compensation, leave encashment, bonus, gratuity etc. My dispute stands subsided and it may be answered accordingly. I give up my claim for reinstatement in service of M/s Pro Interactive Services Ltd. My dispute may be answered accordingly."

3. As deposed on oath by the claimant, he received a sum of Rs. 12,200.00 from the contractor before the Tribunal towards his dues for wages, notice pay, retrenchment compensation, leave encashment, bonus and gratuity etc. He had given up his claim for reinstatement in service of the contractor. Thus, it is evident that the claimant has settled his grievances and received a sum of Rs. 12,200.00 as full and final settlement of his claims against his employer, the contractor. Since the dispute has been settled, the claimant is not entitled to relief of reinstatement with continuity and full back wages in the service of the contractor. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 30.09.2013

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 28 नवम्बर, 2013

**कांआ 2634.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार तूतिकोरिन पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (34/2013) प्रकाशित करती है जो केन्द्रीय सरकार को 28.11.2013 को प्राप्त हुआ था।

[सं एल-44011/2/2012-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 28th November, 2013

**S.O. 2634.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 34/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Tuticorin Port Trust, and their workmen, received by the Central Government on 28.11.2013.

[No. L-44011/2/2012-IR(B-II)]

RAVI KUMAR, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 8th October, 2013

**Present :** K. P. PRASANNA KUMARI,  
Presiding Officer

#### Industrial Dispute No. 34/2013

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Tuticorin Port Trust and their workman]

#### BETWEEN

The Chief Secretary : 1st Party/Petitioner Union  
Tuticorin Port Employees Trade Union  
F-Shed, Old Harbour (Zone-B)  
Beach Road, Tuticorin-628001

#### AND

The Chairman : 2nd Party/Respondent  
V.O. Chidambaranar Port trust  
Tuticorin-628004  
Tuticorin

#### Appearance:

For the 1st Party/Petitioner Union : Absent

For the 1st Party/Respondent : M/s Anand, Abdul  
and Vinodh

#### AWARD

The Central Government, Ministry of Labour & Employment *vide* its Order No. L-44011/2/2012-IR (B-II) dated 19.02.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of Tuticorin Port Trust by way of issuing OM dated 29.11.2010 against Tuticorin Port Employees Trade Union (INTUC) is justifiable or not? What relief the Petitioner Union is entitled to?"

2. After receipt of the Industrial Dispute this Tribunal has numbered it as ID 34/2013 and issued notice to both sides. The Second Party has entered appearance and filed Vakalat. Though the First Party has received notice, he has not appeared so far. From the first date of appearance the case was going on posted awaiting his appearance. But the First Party has all along remained absent. In the absence of the First Party and in the absence of any claim, this Court is not in a position to proceed with the matter. The case is only to be closed. Accordingly, the ID is closed.

3. The reference is answered against the First Party.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 8th October, 2013).

K. P. PRASANNA KUMARI, Presiding Officer

**Witnessed Examined:**

For the 1st Party/Petitioner : None  
 For the 2nd Party/Management : None

Documents Marked on both sides - Nil.

नई दिल्ली, 28 नवम्बर, 2013

**का.आ. 2635.**—औद्योगिक अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार तूतीकोरीन पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (06/2013) प्रकाशित करती है जो केन्द्रीय सरकार को 27.11.2013 को प्राप्त हुआ था।

[सं एल-44011/1/2012-आई आर (बी-II)]  
 रवि कुमार, अनुभाग अधिकारी

New Delhi, the 28th November, 2013

**S.O. 2635.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 06/2013) of the Cent.Govt. Indus.Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Port Trust Tuticorin and their workmen, received by the Central Government on 28/11/2013.

[No.L-44011/1/2012-IR(B-II)]

RAVI KUMAR, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
 INDUSTRIAL TRIBUNAL-CUM-LABOUR  
 COURT, CHENNAI**

Tuesday, the 1st October, 2013

**Present:** K.P. PRASANNA KUMARI,  
 Presiding Officer

**Industrial Dispute No. 6/2013**

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management V.D. Chidambaranar of Port Trust Tuticorin and their workmen]

**BETWEEN**

The General Secretary : Petitioner/1st Party  
 Tuticorin Port Samata Workers Union  
 25/A, Emperor Street, Tuticorin.

**AND**

1. The Chairman : 2nd Respondent/1st Party  
 V.O. Chidambaranar Port Trust  
 Tuticorin-628004

2. The Traffic Manager : 2nd Respondent/2nd Party  
 Tuticorin Port Trust Cargo Handling Labour  
 Pool, Administrative Officer  
 Opp. Harbour Telephone Exchange, Tuticorin-4

**Appearance:**

For the 1st Party/Petitioner: Sri K.S. Narayanan & M.  
 Union Jeyaprakash, Authorized  
 Representatives

For the 2nd Party/1st : Mr. Badri Natarajan,  
 & 2nd Management Advocates

**AWARD**

The Central Government, Ministry of Labour & Employment *vide* its Order No. L-44011/1/2012-IR (B-II) dated 22.01.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of V.O. Chidambaranar Port Trust, Tuticorin regarding not allowing the Petitioner Union *i.e.* Tuticorin Port Samata Workers union, even if it is not signatory Union for settlement to raise the dispute for implementation of Seca 12(3) Settlement on 12.12.1999 is justifiable or not? What relief the Petitioner Union is entitled to?"

2. After the receipt of the Industrial Dispute this Tribunal has numbered it as ID No. 6/2013 and issued notices to both sides.

3. The First Party has entered appearance through an authorized representative. The Second Party is represented by their counsel.

4. Though letter of authorization is filed as early as on 25.03.2013 the First Party has not filed the Claim Statement so far. The First Party as well as its representative have been continuously absent. Though the case was posted for filing Claim Statement continuously, the statement is not so far filed. The First Party seems to be not interested in prosecuting the case. So the case is only to be closed.

5. In the above circumstances, the ID is closed. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 1st October, 2013)

K.P. PRASANNA KUMARI, Presiding Officer

**Witnesses Examined:**

For the 1st Party/Petitioner : None  
 For the 2nd Party/Management : None

## Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
	N/A	

On the Management's side

Ex. No.	Date	Description
	N/A	

नई दिल्ली, 29 नवम्बर, 2013

**का.आ. 2636.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ़ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (22/2012) को प्रकाशित करती है तो केन्द्रीय सरकार को 29.11.2013 को प्राप्त हुआ था।

[सं एल-12012/33/2012-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2636.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 22/2012) of the Cent.Govt. Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 29/11/2013.

[No. L-12012/33/2012-IR(B-II)]

RAVI KUMAR, Section Officer

**ANNEXURE**

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,  
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/22/2012 Dated 01.10.2013

**Party No. 1** : The Regional Manager,  
Bank of India, Head Office, Staff House,  
C-5, G-Block, Bandra Kurla Complex,  
Bandra (E), Mumbai.

: The Branch Manager,  
Bank of India, Sawargaon Branch,  
Tah. Narkhed, Distt. Nagpur (MS).

**Party No. 2** : Shri Namdeo S/o. Champatrao Tambuskar,  
C/o. Shri Namdeo Tendulkar, Ward No. 10  
Thorane layout, Kalmeshwar,  
Teh. Kalmeshwar, Distt. Nagpur (MS).

**AWARD**

(Dated: 1st October, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Bank of India and their workman Shri Namdeo Tambuskar (as per list enclosed) for adjudication, as per letter No. L-12012/33/2012-IR (B-II) dated 23.11.2012, with the following schedule:—

"Whether the action of the management of Bank of India through its Branch Manager, Sawargaon Branch, Tq. Narkhed, Distt. Nagpur (MS) and General Manager, Bank of India, Head Office, Star House, Bandra (East), Mumbai (MS) in illegal terminating the services of Sh. Namdeo S/o. Champatrao Tambuskar, Peon is legal and justified? What extent, the workman is entitled for relief?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement. In response to the notice the workman appeared in person on 21.01.2013 and filed two applications, one for adjournment to file the statement of claim and the other u/s. 36(4) of the Industrial Disputes Act, 1947 no to allow the management to engage advocate and the application u/s. 36(4) under I.D. Act was allowed on 01.04.2013 and the case was posted to 14.05.2013 for filing of statement of claim. On 14.05.2013, 04.07.2013, 19.08.2013 and 01.10.2013, to which dates the reference was adjourned for filing statement of claim due to the absence of the workman, the workman neither appeared, nor filed any statement of claim nor took any kind of step. As it appeared from the record that the workman was not interested to proceed with the case, the case was closed on 01.10.2013.

It is well settled that when a workman raises a dispute challenging the validity of the termination of his services, it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the workman fails to appear or to file written statement or to produce evidence, the dispute referred by the Government cannot be answered in his favour and he could not be entitled to any relief.

In this case also, the workman has failed to produce any evidence in support of his claim and as such, the reference cannot be answered in his favour and he is not entitled to any relief. Hence, it is ordered:—

**ORDER**

The reference is answered in the negative. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2013

**का.आ. 2637.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एलआईसी ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (56/98) को प्रकाशित करती है जो केन्द्रीय सरकार को 29.11.2013 को प्राप्त हुआ था।

[सं. एल-17012/32/97-आईआर(बी-II)]  
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2637.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 56/98) of the Cent. Govt. Indus. Tribunal-cum-labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of LIC of India and their workman, received by the Central Government on 29.11.2013.

[No. L-17012/32/1997-IR(B-II)]  
RAVI KUMAR, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

**No. CGIT/LC/R/56/98**

**PRESIDING OFFICER: SHRI R.B. PATLE**

Shri Darshanlal Saral,  
S/o. Shri Bhagguram Saral,  
C/o R.C. Saral, Sadashiv Nagar,  
Koteshwar Road,  
Bahodapur,  
Bhopal

.....Workman

*Versus*

Regional Manager,  
LIC of India,  
Central Zonal Office,  
Jeevan Shikhu,  
60-B, Hoshangabad Road,  
Bhopal

.....Management

#### AWARD

(Passed on this 9th day of October, 2013)

1. As per letter dated 12.03.1998 by the Government of India Ministry of Labour, New Delhi, the reference is received. The reference is made to this tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-17012/032/97/IR(B-II). The dispute under reference relates to:

"Whether the action of the management of Life Insurance Corp. of India in terminating the services of Shri Darshanlal Saral, S/o Bhagguram Saral *w.e.f.* 31.07.95 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties, 1st party workman filed statement of claim at Page 11 to 15. Case of 1st party is that he was working as daily wage employee in LIC, Gwalior Branch. He was paid wages Rs. 15/- per day. He was working with devotion till 21.1.93 against vacant post. His services were discontinued as per order of Sr. Divisional Manager, he was working as Care Taker on consolidated salary of Rs. 700/- per month. The Branch office was transferred to the building of Regional Office. From 31.7.95, his services were orally terminated. He had completed 240 days continuous service during each of the year. He was not paid retrenchment compensation, he was not served with notice, pay in lieu of notice was not paid to him. His services are terminated in violation of Section 25-F, H, N of I.D. Act. On such grounds, he prays for reinstatement with consequential benefits.

3. IInd party despite of notices issued to him, failed to file Written Statement. IInd party is proceeded ex parte as per order dated 11.09.09. During pendency of the reference, workman died. His LR Shrimati Baladevi, widow of deceased workman is brought on record.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of Life Insurance Corp. of India in terminating the services of Shri Darshanlal Saral, S/o Bhagguram Saral <i>w.e.f.</i> 31.07.95 is legal?	In Negative
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(ii) If not, what relief the workman is entitled to?"	As per final order.
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#### REASONS

5. The LR-Shrimati Baladevi, widow of deceased workman filed her affidavit of evidence directing most of the facts pleaded in statement of claim by the deceased that he was working with the IInd party on daily wages from 19.07.89, he was paid Rs. 15/- per day from 22.1.93, her husband was working as caretaker for both the offices and was paid Rs. 700/- per month. The branch was shifted to Divisional Office building from 25.11.93. That services of her husband were terminated without notice from 31.07.95. Her deceased husband had completed 240 days continuous service, retrenchment compensation was not paid to him, notice was not issued for termination of his service. The



evidence of Shrimati Baladevi, widow of deceased remained unchallenged. IInd party management failed to cross-examine the witness. I find no reason to discard her evidence. Considering the evidence on record, it is clear that termination of services of the deceased workman is illegal. I therefore record my finding in Point No. 1 in Negative.

**6. Point No. 2**—In view of my finding in Point No. 1 that termination of services of deceased workman is illegal, question arises as to what relief the 1st party is entitled to? The relief of reinstatement is not possible as the workman has died during pendency of the reference proceeding. Considering about 6 years length of service, compensation Rs. 1 Lakh would be appropriate. Accordingly I hold and record my finding in Point No. 2.

7. In the result, award is passed as under:—

- (1) Action of the management of Life Insurance Corp. of India in terminating the services of Shri Darshanlal Saral, S/o Bhaguram Saral *w.e.f.* 31.07.95 is not legal.
- (2) IInd party is directed to pay compensation Rs. 1 Lakh to Shrimati Baladevi, LR of the deceased workman.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2013

**का०आ० 2638.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट (संदर्भ सं. 13/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 29.11.2013 को प्राप्त हुआ था।

[सं० एल-12011/68/2011-आई आर (बी-II)]  
रवि कुमार, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2638.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 13/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, received by the Central Government on 29.11.2013.

[No. L-12011/68/2011-IR(B-II)]

RAVI KUMAR, Section Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 9th October, 2013

**Present :** K.P. PRASANNA KUMARI, Presiding Officer

#### Industrial Dispute No. 13/2012

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Bank and their workmen]

#### BETWEEN

The General Secretary : 1st Party/Petitioner Union  
Indian Bank Employees  
Association No.17,  
Ameerjan street  
Choolaimedu,  
Chennai-600094

#### AND

The General Manager : 2nd Party/Respondent  
Indian Bank, Zonal Office  
No. 395, Dr. Nanjappa Road  
Coimbatore-641018

#### Appearance:

For the 1st Party/Petitioner : Sri G. Gopal, Authorized  
Union Representative

For the 2nd Party/Management : M/s T.S. Gopalan & Co.  
Advocates

#### AWARD

The Central Government, Ministry of Labour & Employment *vide* its Order No. L-12011/68/2011-IR (B-II) dated 15.03.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the Indian Bank management, Coimbatore Zone against Sri P. Ganesan, Clerk/Shroff of the Indian Bank, RS Puram Branch by way of imposing punishment of "Be brought down to a lower stage in the scale of pay by two stages" *vide* Order dated 29.08.2009 is legal and justified? What relief the workman concerned is entitled to?"

2. After the receipt of the Industrial Dispute this Tribunal has numbered it as ID No. 13/2012 and issued notices to both sides.

3. The First Party has filed the claim statement contending as follows:

P. Ganesan, Clerk of the Second Party Bank is a member of the First Party Association and was working in

R.S. Puram Branch. While working in the said branch the Second Party had charge sheeted Sri Ganesan alleging that on 26.07.2008 and on 31.07.2008 he has made payment of Rs. 7,000 and Rs. 500 respectively from the SB A/c of one Mahendran through withdrawal Slip without ensuring that pass book was furnished for the withdrawal, that he had not obtained specific manual authorization on the face of the withdrawal slip by the Branch Manager or the Addl. Branch Manager for payment without production of Pass Book and thus he had violated the guidelines of the Bank and that he had not exercised proper care in verification of the signature of the account holder and scrutiny as to the correctness of the endorsements and proper identification of the presenter. An enquiry was held and it was concluded that the charge against Ganesan is proved. In fact Ganesan has disproved the charges in the enquiry and has established that he followed all the guidelines of the Bank. Ganesan was imposed a punishment of bringing down to a lower stage in the scale of pay by two stages. Though an appeal was preferred by Ganesan the Appellate Authority mechanically upheld the punishment imposed by the Disciplinary Authority. In R.S. Puram branch of the Bank single window operators were not provided with pass book printers.

Had the printers been provided the Management could have come to the conclusion whether the customer has given the withdrawal slip alongwith the Pass Book and payment was made with or without the Pass Book. There is negligence on the part of the Management not to provide printers and then place the blame on the staff. Ganesan did not obtain authorization since withdrawal slips were presented alongwith the Pass Book. The Respondent shall be directed to withdraw the punishment imposed on Ganesan and make good the monetary loss suffered by him.

4. Respondent has filed counter statement contending as follows:

An SB Account Holder can approach the bank with Pass Book and withdraw money using withdrawal slip. If an account holder comes without Pass Book for withdrawing money the Branch Manager or Assistant Branch Manager is to authorize on the face of the withdrawal slip in writing. On 01.08.2008 Mahendran, an SB A/c holder of the Bank had come to the Branch for withdrawing Rs. 500/- using withdrawal slip. Since he had no pass book he was asked to get authorization of the Branch Manager. It was found at time that there was no sufficient balance in his account. He instead that there is balance of Rs. 7,500 in his account. He informed that his Pass Book has been lost. On verifying his statement of account he came to know that Rs. 7,000 was withdrawn on 26.07.2008 and Rs. 500 on 31.07.2008. He gave a written complaint to the bank stating that he had not made the above withdrawals. On perusal of the voucher it was found that Ganesan who

was the single window operator on these two days had made the payments against the two withdrawal slips. The signature on the withdrawal slips did not tally with the specimen signature provided by the account holder. A show cause notice was issued to Ganesan. He gave a reply denying his involvement in the irregularities committed. A domestic enquiry was conducted and it was found that Ganesan is guilty of the charges made against him. Though the charges proved are grave and warrant a deterrent punishment leniency was shown and a lesser punishment has been imposed on Ganesan. The allegation that action has been initiated against Ganesan by way of victimization is not correct. The findings of the Enquiry Officer cannot be said to be perverse. So there is no scope for the Tribunal to interfere with the findings. The petitioner is not entitled to any relief.

5. The evidence in the case of consists of Ex. W1 to Ex. W 17 marked on the side of the petitioner and Ex. M1 to Ex. M4 marked on the side of the Respondent. No oral evidence was adduced on either side.

6. The points for consideration are:

- (i) Whether there was justification for the Respondent in imposing punishment of bringing down to a lower stage in the scale of pay by two stages on the concerned worker?
- (ii) What is the relief to which the petitioner is entitled to?

### The Points

7. There is no dispute regarding the facts of the case. Ganesan who is a member of the petitioner association is working as Clerk under the Respondent Bank. During the relevant period he was working in R.S. Puram branch of the Bank. One Mahendran who is a joint SB A/c holder of the branch alongwith his mother approached the branch on 1.08.2008 to withdraw Rs. 500 from his account. He had no Pass Book with him. Since he wanted to withdraw amount using withdrawal slips without the Pass Book he was directed to get authorization of the Branch Manager or the Assistant Manager. It was then noticed that there is only Rs. 500 left in the account of Mahendran. He insisted that there should be a balance of Rs. 7,500 in the account. He was asked to come to the Bank with the Pass Book. He again approached the Bank and informed that he had lost his Pass Book. On verification of his statement of account that was furnished to him he noticed that Rs. 7,000 has been withdrawn from his account on 26.07.2008 and another Rs. 500 on 31.07.2008. He reported to the Bank that actually he had not made these two withdrawals and made a written complaint to the Bank to this effect.

8. Admittedly, on 26.07.2008 and 31.07.2008 Ganesan, the concerned workman was the single window operator. The two payments by withdrawal slips from the account of

Mahendran were made by Ganesan. A Show Cause Notice was issued to Ganesan referring to the alleged irregularities done by him. He gave a reply denying the allegations. This was found unsatisfactory and a charge sheet was issued against him as below:

- (i) While working in R.S. Puram branch as single window operator, on 26.07.2008 and on 31.07.2008 you have made of Rs. 7,000 and Rs. 500 respectively from the S.B. Account 431793055 of Sri P. Mahendran through withdrawal slip. You have failed to ensure making payment along with the pass book.
- (ii) You had not obtained specific manual authorization on the face of the withdrawal slip by BM/ABM for payment without production of pass book. Thus you had violated HO guidelines.
- (iii) You have not exercised proper care to verification of signature of the account holder and scrutiny as to the correctness of the endorsements and proper identification of the presenter.

A domestic enquiry was conducted on the above charges and Ganesan was found guilty of the charges. The Disciplinary Authority imposed the punishment that he be brought down to the lower stage in the scale of pay by two stages. Though Ganesan approached the Appellate/ Authority, his appeal was dismissed and the punishment imposed by the DA was confirmed. It is in respect of this punishment, the petitioner association has raised an Industrial Dispute. According to the petitioner, Ganesan has been victimized. The stand of the petitioner is that the presenter of the withdrawal slips has approached the Bank with Pass Book. It is stated by the petitioner in the Claim Statement that in R.S. Puram branch of the Bank, pass book printer has not been furnished to the single window operator and this has resulted in the confusion. According to the petitioner the account holder has reported to the Bank only subsequently that the Pass Book has been lost.

9. There is no case for the petitioner that the enquiry was not conducted in fair and proper manner. Both sides are relying upon the documents pertaining to the enquiry also in support of their case.

10. It is pointed out by the Counsel for the Second Party that it is not a case coming under Section-11A of the ID Act and this Tribunal has no power to interfere with the punishment imposed by the Disciplinary Authority, the fairness of the enquiry having been admitted by the First Party. In the decision in *THE WORKMEN OF M/S. FIRESTONE TYRE AND RUBBER CO. OF INDIA (PVT.) LTD VS. THE MANAGEMENT OF FIRESTONE AND OTHERS* and other cases reported in 1973-1-SCC-813 the Apex Court has referred to various decisions and reiterated that prior to the introduction of Section-11 A of the Act, when a proper enquiry has been held by an

employer and the finding misconduct is a plausible conclusion flowing from the evidence adduced at the enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate authority, in the normal case. It is further held that such interference will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimization, unfair labour practice and malafides. Referring to Section-11A of the Act it was held that after the introduction of the Section the Tribunal is clothed with the power to re-appraise the evidence in the domestic enquiry and satisfy itself whether the evidence relied on by the employer establishes the misconduct alleged against the workman. However, Section-11A of the Act comes into operation only in case of discharge or dismissal of the workman. The present case is not one of discharge or dismissal. So there is no question of re-appreciation of the evidence of the enquiring authority. The position that the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate authority still holds good unless the finding arrived at in the enquiry are perverse or the management is guilty of victimization or unfair labour practice. In this respect the decision of the Madras High Court in *Zonal Manager, Bank of India, Chennai Vs. General Secretary, Bank of India Staff Union, Chennai* and Another reported in 2011- 1-LLJ-529 relied upon by the Second Party also is relevant. Here it was held that being a case which was not of dismissal or discharge, having found that the enquiry was fair and proper and the charges was supported by sufficient evidence and the report of the Enquiry Officer was not perverse, the Tribunal ought not have gone into the question of proportionality of punishment.

11. It is clear from the above legal pronouncements that this Tribunal is not competent to consider the question whether the finding arrived at by the enquiring authority is proper unless it is perverse. In the present case, the finding could not be said to be perverse at all. It is very much clear on going through the report of enquiry that it was absolute negligence on the part of Ganesan, the concerned workman that caused loss to the account holder and caused embarrassment to the Bank. The Enquiring Authority has found that the signature of the account holder will be available in the system and in the opening form. The signature in the withdrawal slips were found very much different from these. If only a verification was made the amounts would not have been paid to the presenter of the slips. In the absence of Pass Book, authorization on the face of the withdrawal slips should, have been obtained. The stand of the worker seems to be that the Pass Book was brought by the presenter. Even if it is the case the difference in the signature should have been noticed. It was referring to all these aspects the enquiring authority found the worker guilty of the charges. The finding could not be said to be perverse at all. The punishment imposed

by the Disciplinary Authority could not be said to be disproportionate also. It is not a punishment shockingly disproportionate to the guilt committed. So there is no reason to interfere with the punishment imposed also. I find that the petitioner is not entitled to any relief. Both points are found against the petitioner.

12. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 9th October, 2013)

K.P. PRASANNA KUMARI, Presiding Officer

#### Witnesses Examined:

For the 1st Party/Petitioner Union : None

For the 2nd Party/Management : None

#### Documents Marked

##### On the petitioner's side

Ex.No.	Date	Description
Ex.W1	10.10.2008	Show Cause Notice CO:CBE:VG:339 2008-09 issued to Sri P. Ganesan by Circle Office, Coimbatore
Ex.W2	01 11.2008	Reply letter by Sri P. Ganesan to the above Show Cause Notice
Ex.W3	30.12.2008	Charge Sheet CO:CBE:VG:473:2008-09 issued to Sri P. Ganesan by Circle Office, Coimbatore
Ex.W4	17.01.2009	Reply letter by Sri P. Ganesan to the above Charge Sheet
Ex.W5	06.02.2009 24.02.2009 25.02.2009 23.03.2009	Enquiry Proceedings
Ex.W6	-	Defence side documents DEX-1 to DEX-15
Ex.W7	-	Management side documents MEX-1 to MEX-8
Ex.W8	-	Presenting Officer's report
Ex.W9	24.05.2009	Defence summing up
Ex.W10	28.05.2009	Enquiry Officer's findings
Ex.W11	27.06.2009	Comments of the CSE on EO findings
Ex.W12	28.08.2009	Orders of the Disciplinary Authority (DA)
Ex.W13	06.10.2009	Appeal to the Appellate Authority by the CSE against the punishment imposed by the DA

Ex.No.	Date	Description
Ex.W14	26.03.2010	Orders of the Appellate Authority
Ex.W15	07.12.2010	Letter IBEA/40/2010-13 raising Industrial Dispute on the above issued with ALC
Ex.W16	19.03.2011	Letter ZO:CBE:VG:936:2010-11 by Indian Bank Zonal Office, Coimbatore
Ex.W17	16.04.2011	Rejoinder by the Petitioner Union to ALC (Chennai) as reply to the above letter dated 09.03.2011 of the Management of Indian Bank, Zonal Office, Coimbatore

##### On the Management side

Ex. M1	25.07 2009	Proposed orders of Disciplinary Authority, Indian Bank, CO, Coimbatore in respect of disciplinary proceedings against P. Ganesan.
Ex. M2	20.08.2009	Representation from P. Ganesan to the Disciplinary Authority
Ex. M3	20.08.2009	Proceedings of Personal Hearing
Ex. M4	20.08.2009	Representation from P. Ganesan to Disciplinary Authority in respect of proposed punishment — charge sheet dated 03.12.2008

नई दिल्ली, 29 नवम्बर, 2013

**का०आ० 2639.**—औद्योगिक विवाद अधिनियम, 1947 ( 1947 का 14 ) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, धनबाद-2 के पंचाट ( संदर्भ सं. 268/1999 ) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.11.2013 को प्राप्त हुआ था।

[सं० एल-12012/39/1999-आई आर ( बी-II )]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2639.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 268/1999) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank, and their workmen, received by the Central Government on 29/11/2013.

[No. L-12012/39/1999-IR(B-II)]

RAVI KUMAR, Section Officer



**ANNEXURE**  
**BEFORE THE CENTRAL GOVERNMENT**  
**INDUSTRIAL TRIBUNAL (NO. 2)**  
**AT DHANBAD**

**Present:** Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

**Reference No. 268 of 1999**

**PARTIES** : Dy. General Secretary,  
 PNB employees' Union  
 (Bihar), Punjab National  
 Bank, Shastri Nagar,  
 Dhanbad, Vs. Regional  
 Manager, Punjab National  
 Bank, Regional Office,  
 Ranchi

**APPEARANCES:**

On behalf of the workman/ : Mr. D. Mukherjee,  
 Union Ld. Advocate

On behalf of the : Mr. O.P. Verma,  
 Management Ld. Advocate

State : Jharkhand Industry : Banking

Dated, Dhanbad, the 4th Oct., 2013

**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-12012/39/99/IR(B-II) dt. 07/11/06/1999.

**SCHEDULE**

"Whether the action of the Management of the Punjab National Bank Telo Branch, Distt. Bokaro not to regularize/absorb Sh. Phulchand Prajapati as a Peon in sub-staff category w.e.f. 6.5.1990 with all benefits is justified? If not, what relief the concerned workman is entitled to?"

2. The case of sponsoring Punjab National Bank Employees Union, Dhanbad for workman Phulchand Prajapati is that the workman was initially appointed as a part time sweeper on 01.09.1982 at Telo Branch of Punjab National Bank; since then he has been regularly and continuously working. He also stated to continuously work as full-time peon/sub-staff against the permanent vacancy following the transfer of Shri Kailash Ram, the only regular and permanent peon/sub staff at Telo Branch to Daltenganj Branch of Punjab National Bank on 06.05.1990. Further pleaded that the workman started to work as full-time peon/substaff since 5.5.90 continuous, by putting in more than

240 days attendance. He has been performing the job of sorting, arranging, numbering tattling total number, stitching the vouchers, stocking old records orderly, filling letters independently, cash remittance, bringing statement from Regional Office, movement of Ledgers and all others works of Peon/Sub-staff. On his representation in view of his work, the local management also recommended for regularization of the workman, yet the anti-labour management did not regularize him as Peon/Sub-staff. The action of the management in not regularizing the workman is vindictive, arbitrary, exploitive and illegal.

3. In the rejoinder under signature of Mr. D. Mukherjee, the Ld. Advocate for the workman, specifically denying the allegation of the O.P./ Management, it has been pleaded that the alleged preliminary objection of the O.P./Management and merits must be heard together as per the settled law, and that any alleged circular, instruction etc, can not supersede the law laid down by the Apex Court.

4. Whereas challenging the maintainability of the industrial dispute on the grounds of its filling after five year, the contra case of the O.P./Management is that the settlement dt. 07.05.1984 between the Bank and PNB Employees Federation Part Time Sweeper shall be eligible for 1/3rd, 1/2, 3/4th full scale wages dependent upon the number of hours and the area required to sweep in the Bank. A Part Time Sweeper can only be eligible for getting full scale of wages in case the sweeping area of the office will be more than 5000 sq. feet. The Punjab National Bank (PNB) is a Nationalized Bank as defined under the Banking Acquisition and Transfer of Undertaking Act 1970, and a State in view of Art. 12 of the Constitution of India. It has to mandatorily follow the instructions of the Reserve Bank of India in the matter of policy involving public interest. As per the latest letter No. F. 1/1/97-SCT(B) dt. 4.8.98 of the Ministry of Finance, Deptt. of Economic Affairs (Banking Division) and the guidelines of the government, 25% of the vacancies in the Peon's cadre are required to be reserved filling up from the cadre of Sweepers, Farashes etc. who have put in minimum 5 years of service with elementary literacy and ability to read either English, Hindi or Regional language. According to the government Guidelines, only full time and full wages sweepers are to be considered for absorption as Peon, appointment/conversion subject to the principle for fulfilling length of service criteria as per the Bank Circular Letter No. 22/99 dt. 24.9.99 following the Government Letter dt. 4.8.1998. Therefore, the claim as admitted by the Union for absorption of Shri Prajapati as Peon working as part time sweeper with BO: Telo. Distt. Bokaro allegedly to have performed the duties of peon between the 1990-1993 in absence of permanent Peon is beyond the aforesaid provision of the government policy.

Further it is alleged by the O.P./Management that Shri Fulchand Prajapati kept on working as a Part Time Sweeper at BO: Telo since 01.09.1982, initially at Rs. 60/-,

then 1/3rd scale of wages as per the aforesaid conciliation Settlement. Since the transfer of Shri Kailash Ram, only one Peon/Daftry, w.e.f., 06.05.90 from the said Branch to Daltengaj Branch on medical/compassionate ground, no sub-staff could be posted till 13.10.1993 due to non-availability of subordinate staff panel Sri Prajapati himself willingly performed the job of Peon on few occasions, or which he was also compensated by monetary benefits. But his occasional working ended with posting of subordinate staff Sri Tahleshwar Mahato at the Telo Branch on 13.10.1993.

5. Categorically denying the allegations of the workman, the O.P./Management in its rejoinder has alleged the workman to have been initially appointed as Part Time Sweeper for a consolidated pay of Rs. 60 p.m..w.e.f. 01.09.83, subsequently revised to Rs.1000 p.m. w.e.f. 01.11.1984, and his wages enhanced to 1/3 scale of pay w.e.f. 01.07.1989 for increase in the sweeping area. He is a part-time sweeper was never required to put his wring / signature on the document of the bank. The vacancy of peon at BO: Telo was filled in on 13.10.93 with the posting of Tahleshwar Mahato. Moreover, voluntary service of Shri Prajapati on payments of monetary benefits for it creates not any legal right for his regularization. Thus the action of the Bank was ever neither vindictive nor anti-labour.

#### Finding with reasons

6. In this reference case, WWI Fulchand Prajapati—the workman himself for the Union, and MWI Shushil Nirmal Ekka, the Manager for the O.P./Management have been examined.

WWI Fulchand Prajapati, the workman himself appears to have put his claim for his regularization on the sole ground that he was though initially engaged as part time sweeper by the O.P./Management of Telo Branch of Punjab National Bank, yet has been working as Peon against the permanent post of Sri Kailash Ram following the latter's transfer since 6.5.1990 at the Branch, by accordingly working for more than 240 days in each calendar year as per the photocopies of the original documents of the managements as Extt.1 series (On waving formal proof). The workman has denied to have worked as Peon out of his own accord.

7. Whereas the statement of MWI Shushil Nirmal Ekka, the then Branch Manager during 1989 to 1993 at the Telo Branch reveals the fact that at the relevant time the workman was a part-time sweeper for about 1200 Sq. feet area of that Branch, but he (MWI) never authorized the workman to work as a peon, in the Branch in the absence of a regular peon, and the workman never discharged his duties as a Peon rather he occasionally used to voluntarily render his service as such, for which he was paid through vouchers as recorded from Sl.No. 93 to 143 of the voucher Register in original (Ext.M.1), the T.A. as per his T.A. Bills (Ext. M.2 series) and the (workman) had carried "Daks" on two

occasions as noted at pages 27 and 28 of the Dak Delivery Register (Ext.M.3 & 3/1 respectively). The management witness (MWI) in his cross examination affirms that during his tenure the workman discharged certain duties of Peon at Telo Branch, but not as a replacement of Kailash Ram, denying his working as Peon from 1992-93 for more than 240 days in a year at the Branch.

8. In spite of more than ample opportunity neither of the Learned Counsels/Representatives appeared for arguments; at last it was reserved an order.

On perusal of the materials available on the case record, I find that the claim of the workman for regularization as Peon is baseless, because his Certificate dt 1.1.1991 (Ext.W1/2) issued by Shri Shushil Nirmal Ekka. (MWI) does not justify his engagement by whom after the transfer of Sri Kailash Ram to B/O Daltenganj. Besides his photocopies of the Voucher Register (Ext. WW1/3-14 series) and of his T.A. Bills (Extt.1/15-56, all under the signatures of the workman Fulchand Prajapati; and his two times Dak Deliveries" (Ext.W.1-1/1) which are replicas of the management's original documents — the Voucher Register (Ext.M-1) bearing the payment through voucher from page 93 to 143, the T.A. Bills of the workman (Ext.-2 series), and the Dak Delivery Register for two occasions of the workman for Dak Delivering (Ext.M.3 & 3/1)). All these documents prove that the workman though occasionally performed the job of stitching vouchers, payment to parties concerned as Peon during the period of 5th May, 1990 to April, 1991 at the Branch. The workman as Part Time sweeper appears to have drawn his T.A. for his service utilized (Ext.M.2 series) in the year 1992-93. But none of the documents proves the fact that the workman has factually worked for more than 240 days in a period twelve calendar months preceding the date with the present reference as required and defined under Sections 25 B (a) (ii) of the Industrial Tribunal Act, 1947 for regularization.

In the circumstances, it is, therefore, responded and accordingly hereby:

#### ORDER

That the Award be and the same is passed that the action of the management of the Punjab National Bank, Telo Branch, Distt. Bokaro not to regularize/absorb Shri Phulchand Prajapati as a Peon in sub-staff category, w.e.f. 6.5.1990 with all benefits is quite justified. The workman concerned is not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2013

का०आ० 2640.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम

न्यायालय चेन्नई के पंचाट (संदर्भ सं. 51/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[सं एल-12011/71/2010-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2640.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 51/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, received by the Central Government on 29/11/2013.

[No. L-12011/71/2010-IR (B-II)]

RAVI KUMAR, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Tuesday, the 8th October, 2013

**Present:** K.P. PRASANNA KUMARI, Presiding Officer

#### Industrial Dispute No. 51/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial disputes Act, 1947 (14 of 1947), between the Management of Indian Bank and their workman)

#### BETWEEN

The General Secretary : 1st Party/Petitioner Union  
Indian Bank Employees' Union  
6, Moore Street, Mannady Corner  
Chennai-600001

#### AND

The General Manager : 2nd Party/Respondent  
Indian Bank, Head Office  
Rajaji Salai Chennai-600001

#### APPEARANCE:

For the 1st Party/Petitioner : Sri Thomas J. Jeyaprabhakaran,  
Union Authorised Representative

For the 2nd Party/ : M/s T.S. Gopalan & Co.,  
Management Advocates

#### AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011/71/2010-IR (B-II) dated 27.05.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of Indian Bank, Chennai in denying 1/3rd Scale Wages to Smt. Saroja Ammal a Part Time Sweeper and 25% of Water Carrying Allowance w.e.f. 1977 is legal and justified? What relief the workman is entitled to?"

2. After the receipt of the Industrial Dispute this Tribunal has numbered it as ID 51/2011 and issued notice to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.

3. The case that is put forth in the Claim Statement is this:

Saroja Ammal mentioned in the schedule of reference was engaged as a Sweeper in Kolathur Branch of the Second Party Bank in the year 1977. She was sweeping an area of 1200 Sq.ft. working for about 2-1/2 hours a week. Initially she was paid @ Rs. 15/- a month. This was enhanced from time to time. The Second Party was requested to give scale wages to Saroja Ammal. In spite of continuous communication between the Kolathur Branch and the Regional Office of the Respondent Bank the request of Saroja Ammal was not met with favourably. The Second Party Management had standardized the parameters in the determination of wages for Part-Time Sweepers. It was clarified that the wages payable to Part-Time Sweepers are to be determined on twin parameters i.e, floor Space Area to be cleaned in terms of Sq.ft. and total working hours per week. The Management has been unjustly denying benefit to Saroja Ammal. She is entitled to 1/3rd Scale Wages from the date of initial engagement in the year 1977 and 1/2 Scale Wages from 02.11.1998, the date on which Kolathur Branch was shifted to new premises and she was attending additional work.

4. The Second Party has filed Counter Statement contending as follows:

The Second Party being a nationalized bank has laid down procedure and government procedure in the matter of recruitment. In the case of Permanent Part- Time Sweepers candidates sponsored by Employment Exchange has to be considered. The engagement of Saroja Ammal was purely casual in nature. Her name is not borne on the rolls of the establishment. So she is not entitled to claim 1/3rd Scale Wages. Saroja Ammal was engaged by the Branch Manager without the sanction of the Regional Office. She is not entitled to regularization. The requirement as to Permanent Part Time Sweeper is governed by the terms of settlement of 1993. At that time the First Party did not raise any dispute concerning Saroja Ammal. It is not open to the First Party to contend that Saroja Ammal is entitled to Scale Wages and Water Carrying Allowance as if she has been regularized as Permanent Part Time Sweeper. If such a contention is accepted it will be against the terms of reference. In the absence of reference to the effect whether



Saroja Ammal is entitled for regularization as Permanent Part Time Sweeper, the claim for Scale Wages is not maintainable. The claim is to be rejected.

5. The First Party has filed a rejoinder mostly repeating the case in the claim statement.

6. The evidence in the case consists of documents marked as Ex.W1 to Ex.W37 and Ex.M1 to Ex.M13. No oral evidence was adduced on either side.

7. The points for consideration are:

- (i) Whether Saroja Ammal is entitled to 1/3rd Scale Wages and Water Carrying Allowance from 1977?
- (ii) If not, what if any is the relief to which Saroja Ammal is entitled?

#### Points (i) & (ii)

7. It is beyond dispute that Saroja Ammal had been working as Sweeper in Kolathur branch of the Second Party Bank for a long time. That she has been working in the Bank from the year 1977 is not disputed by the Second Party. The only dispute that is raised is that Saroja Ammal was engaged as a casual worker by the then Manager of the Kolathur Branch without permission from the authorities, that the engagement in any case is casual in nature and therefore she is not entitled to any of the relief claimed in the Claim Statement. The case of the First Party is that Saroja Ammal having been working with the Bank from the year 1977, she is entitled to 1/3rd Scale Wages from that year and 1/2 Scale Wages after the Bank has been shifted to the new premises. It is claimed by the First Party that on the basis of the very Bipartite Settlement arrived at between the Bank and the employees she is entitled to the relief. On the other hand it is contended by the Second Party that the Bipartite Settlements is in respect of Part-Time Permanent employees and not in respect of casual labourers and therefore she is not entitled to any relief.

8. The authorized representative of the First Party has referred to different documents showing the several communications in the matter. In Ex.W12 the Branch Manager has given the details of Saroja Ammal to the Respondent. In this communication dated 22.07.1993 it is stated that Saroja Ammal was initially engaged in 1977 and that during that period engagement of Part Time Sweepers was not through Employment Exchange. Ex.W14 is another communication by the Branch Manager to the Regional Office stating that she has been sweeping an area of 2100 Sq.ft. and was working for 9 hours a week. She was paid Rs. 175 a month at that time. The First Party has raised the issue during the structural meeting held in 1994 and the Zonal Manager by letter dated 29.03.1995, the copy of the minutes of which is marked as Ex.W15 has requested the Branch Manager to send all the papers regarding the engagement of Saroja Ammal. By letter dated 14.07.1995 the Branch Manager has furnished the Age Certificate of

Saroja Ammal. The Zonal Office later directed her to the District Medical and Health Officer through the Branch Manager to obtain Age Certificate. Ex.W18 dated 28.10.1995 is the letter from the Branch Manager to the Zonal Office alongwith a representation by Saroja Ammal. In Ex.W19 the Manager has stated that Saroja Ammal is sweeping an area of 2100 Sq.ft. By Ex.W20 letter more details were sought from the Branch Manager. As requested from the Regional Office, the Branch Manager has even calculated the amount that would have been payable to Saroja Ammal in case she was given 1/2 Scale Wages. The arrears that would have been due in that case also is seen calculated. In spite of all these communications, the request of Saroja Ammal to give her scale wages was unanswered.

9. The Second Party has furnished the circulars of the Bank and other documents to show that Saroja Ammal being a casual worker is not entitled to Scale Wages. It could be seen from Ex.M4 the communication from the Zonal Office that the twin parameters in respect of payment of wages to Sweepers is in respect of Permanent Part-Time Sweepers only. Ex.M1, the circular of the Bank and Ex.M5, the settlement itself would show this.

10. There seems to be no dispute that the engagement of Saroja Ammal is only as a casual labourer. She was working only for a few hours. Her name was not in the rolls of the Bank. She was being paid consolidated wages only. So there is justification in the stand of the Second Party that not being a Permanent Part-Time Sweeper the benefit of the Bipartite Settlements is not available to the concerned worker.

11. In spite of the above Saroja Ammal is entitled to some relief regarding the wages drawn by her. She has started to work from 1977. She is now drawing a consolidated wages of Rs. 1,050 only.

12. The nature of the work done by Saroja Ammal could be deciphered from the documents produced. From Ex.W19 a letter written by the Manager to the Zonal Office, it is seen that Saroja Ammal was sweeping a plinth area of 2100 Sq.ft, coming to a carpet area of 990 Sq.ft and she was working for about 9 hours a week. By Ex.W23 dated 18.12.1998 the Branch Manager has again informed the Zonal Office that the Branch has been shifted to a new premises from November 1998 onwards, that the carpet area of the premises is 1474 Sq.ft. All these communications were for the purpose of giving scale wages to Saroja Ammal.

13. It is true that Saroja Ammal is only a casual worker. But based on principles of natural justice she is entitled to wages equal to that of permanent employees, though she will not be entitled to other benefits to which the permanent employees are entitled. It could be seen from the very circular of the Second Party Bank and marked as Ex.W6 that this was accepted as criteria for paying wages to casual workers also. The circular is regarding engagement of



persons during leave vacancies of sub-staffs. Under Clause-4 of the circular the Respondent has stated that a candidate shall not be engaged for more than 12 days in any calendar month. In Clause-5 it is stated that the employee is entitled to proportionate wages for all the days of engagement and for that purpose the minimum basic pay in Sub-Staff cadre with proportionate DA, HRA, CCA, if any, should be taken into account. The only restriction put is that the temporary sub-staff members are not entitled for special allowance and other performance allowance and they should not be taken into account for calculating the wages. Even if this criteria is adopted Saroja Ammal would be entitled to proportionate wages to that of permanent Sub-Staff.

14. As already stated, since the branch has been shifted to the new premises Saroja Ammal is sweeping carpet area of 1474 Sq.ft. working about 12 hours a week. As per the parameter provided by the Respondent Bank, a Permanent Part-Time Sweeper sweeping an area between 1000-1750Sq. ft. working between 6 to 13 hours a week is entitled to 1/3rd Scale Wages. If the criteria given by the Bank is adopted she is entitled to amount equal to 1/3rd Scale Wages for the work done. Though there is a claim that the worker is entitled to 25% Water Carrying Allowance also there is no material available as to whether she was doing such work. In any case there is no claim that after the bank was shifted to the new premises she was required to carry water. So the benefit should be confined to 1/3rd Scale Wages as stated above. The dispute was raised by the petitioner as early as in May, 2005. So the concerned worker is entitled to the relief from June, 2005.

15. Accordingly an order is passed as follows. The second party shall pay the workers Saroja Ammal wages equal to 1/3rd Scale Wages payable to Sub-Staff with effect from June, 2005.

16. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 8th October, 2013)

K.P. PRASANNA KUMARI, Presiding Officer

#### Witnesses Examined:

For the 1st Party/Petitioner Union : None  
For the 2nd Party/Management : None

#### Documents Marked: ON the petitioner's side

**Ex.No. Date Description**

Ex.W1 31.05.2005 Letter from Indian Bank Employees Union addressed to Asstt. Labour Commissioner (Central, Chennai

Ex.W2	24.03.2006	Letter from HO: HRM Deptt. Addressed to Assistant Labour Commissioner, Chennai
Ex.W3	29.10.2007	Letter from Indian Bank Employees, Union addressed to Asstt. Labour Commissioner, Chennai
Ex.W4	28.10.1980	Indian Bank, HO: Industrial Relations Deptt. Circular No. 2/80
Ex.W5	19.11.1980	Letter from HO:Personnel Department addressed to Branches/ZonalRegional/Area Offices
Ex.W6	04.03.1983	Letter from CO/Personnel Deptt. addressed to all branches
Ex.W7	23.02.1989	Letter from CO/Personnel Deptt. addressed to all Zonal Offices
Ex.W8	19.01.1994	Circular from Zonal Office, Madras addressed to all branches in Madras Zone
Ex.W9	16.02.1995	Letter from CO/Personnel Deptt. Addressed to all Zonal Offices
Ex.W10	30.09.1978	Letter from Gol, Ministry of Finance addressed to CMD of all nationalized banks
Ex.W11	30.11.1978	Annexure submitted by the branch to Regional Office, Villipuram
Ex.W12	06.01.1993	Letter from PV Kalathur branch to Zonal Office.
Ex.W13	22.07.1993	Letter from PV Kalathur branch to Zonal Office.
Ex.W14	15.10.1994	letter from PV Kalathur branch to Regional Office, Kancheepuram
Ex.W15	29.03.1995	Letter from Zonal Office, Vellore to PV Kalathur branch
Ex.W16	14.07.1995	Letter from PV Kalathur branch to Zonal Office, Vellore
Ex.W17	24.07.1995	Letter from Zonal Office, Vellore to PV Kalathur branch
Ex.W18	28.10.1995	Letter from PV Kalathur branch to Zonal Office, Vellore
Ex.W19	29.01.1996	Letter from PV Kalathur branch to Zonal Office, Vellore
Ex.W20	05.02.1996	Letter from Zonal Office, Vellore to PV Kalathur branch
Ex.W21	31.01.1997	Letter from PV Kalathur branch to Zonal Office, Vellore

Ex.W22	13.05.1997	Letter from PV Kalathur branch to Regional Office, Kancheepuram	Ex.W36	13.01.1994	Settlement dated 13.01.1994 under ID Act between the Management and the Union before Asstt. Labour Commission
Ex.W23	18.12.1998	Letter from PV Kalathur branch to Zonal Office, Vellore			
Ex.W24	04.10.2000	Letter from PV Kalathur to Regional Office, Kancheepuram	Ex.W37	23.08.1993	Settlement dated 23.08.1993 under ID Act between the Management and the Union before Asstt. Labour Commissioner
Ex.W25	11.11.1993	Settlement dated 11.11.1993 under ID Act between the Management and the Union			
Ex.W26	29.04.1993	Settlement dated 29.04.1993 under ID Act between the Management and the Union	<b>On the Management's side</b>		
Ex.W27	06.12.1993	Settlement dated 06.12.1993 under ID Act between the Management and the Union before Asstt. Labour Commissioner	<b>Ex.No.</b>	<b>Date</b>	<b>Description</b>
Ex.W28	06.12.1993	Settlement dated 06.12.1993 under ID Act between the Management and the Union before Asstt. Labour Commissioner	Ex.M1	28.10.1980	Circular No. IRD/2/8—IR Department of Respondent-Reg. floor space/working hours per week/wage per Month
Ex.W29	13.04.1993	Settlement dated 13.04.1993 under ID Act between the Management and the Union before Asstt. Labour Commissioner	Ex.M2	18.11.1980	Circular IRD 3/80—regarding part time sweepers
Ex.W30	25.05.1993	Settlement dated 25.05.1993 under ID Act between the Management and the Union before Asstt. Labour Commissioner	Ex.M3	04.03.1983	Circular No. 24/83 of CO/ PERSONNEL DEPARTMENT of Respondent Bank regarding engagement of Sub-Staff during leave vacancies
Ex.W31	13.04.1993	Settlement dated 13.04.1993 under ID Act between the Management and the Union before Asstt. Labour Commissioner	Ex.M4	23.02.1989	Bank's Circular regarding payment of wages to permanent part time sweepers
Ex.W32	21.03.1991	Settlement dated 21.03.1991 under ID Act between the Management and the Union before Assistant Labour Commissioner	Ex.M5	28.07.1993	Settlement u/s 18(1) of ID Act in the matter of filling up of part time sweepers
Ex.W33	08.06.1994	Settlement dated 08.06.1994 under ID Act between the Management and the Union before Asstt. Labour Commissioner	Ex.M6	16.01.2006 &	Letter from Respondent to Union enclosing extract of minutes of Central Consultative Committee Meeting for 09.12.2005 Award Staff held on 09.12.2005.
Ex.W34	30.05.1994	Settlement dated 30.05.1994 under ID Act between the Management and the Union before Asstt. Labour Commissioner	Ex.M7	16.02.1995	Circular—IRC—95 regarding part time sweepers enclosing circular IRD 2/80 dated 28.10.1980
Ex.W35	30.05.1994	Settlement dated 30.05.1994 under ID Act between the Management and the Union before Asstt. Labour Commissioner	Ex.M8	19.06.1995	Copy of letter from Ministry of Labour, Government of India, New Delhi—regarding engagement of casual Sweepers
			Ex.M9	02.06.2005	Copy of 8th Bipartite Settlement—matter relating to Part Time Employees.
			Ex.M10	18.08.2008	Minutes of Central Consultative Committee Meeting Union
			Ex.M11	30.09.1978	Circular Notice—No. F/1/2/1/77/IR from Government of India, Ministry of Finance, New Delhi—to all Nationalized Banks

Ex M12 16.08.1990 Circular Notice No. F/3/3/104/87-IR from Government of India, Minister of Finance, New Delhi

Ex. M13 26.10.1994 Circular by Indian Bank-No. 113/94-95-Misc.-139

नई दिल्ली, 29 नवम्बर, 2013

**का०आ० 2641.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) कि धारा 17 के अनुसरण में केंद्रीय सरकार नॉर्थ सेंट्रल रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट (संदर्भ संख्या 07/2005) को प्रकाशित करती है, जो केंद्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[सं० एल-41012/151/2004-आई आर (बी-1)]  
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2641.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 07/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of North Central Railway, and their workmen, received by the Central Government on 29/11/2013.

[No. L-41012/151/2004-IR(B-1)]  
SUMATI SAKLANI, Section Officer

#### ANNEXURE

**BEFORE SRI RAM PARKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR**

**INDUSTRIAL DISPUTE NO. 07/2005.**

#### Between :

Rajveer Singh Son of Ram Swarup,  
Village Churhela Chanderpur  
Post Barnhal Banganwa,  
District Mainpuri U.P.

And

Divisional Railway Manager,  
NCR, Allahabad.

#### AWARD

1. Central Government Mol, New Delhi *vide* notification non L-41012/151/2004-IR B-1 dated 08.02.2005, has referred the following dispute for adjudication to this tribunal—

2. Whether the action of the management in refusing to employ Sri Raj Veer Singh (Casual Labour) with effect from 29.04.83 is legal and justified? If not to what relief Sri Raj Veer Singh is entitled to?

3. Brief facts are that it has been alleged by the claimant that he was engaged by the railway to perform casual nature of work on open line. During the period in question he continuously worked for more than 120 days and he was given monthly rated casual labour by the opposite party and he was being paid his wages at 1/30 of scale wages. He worked up to the period 29.04.83 and discharged his duties under various railways stations. He had been given status of monthly rated casual labour; has medical screening was also done by the railway doctors who after examining the workman medically issued a certificate *vide* MC No. 045258. The opposite party refused to give employment to the workman, without any justified cause and without issuing any notice or notice pay in lieu thereof. Moreover the workman had rendered more than 240 of service. He was also entitled for the benefit of Section 25F of the ID Act.

4. It is alleged that several junior persons viz., Shadi Lal, Ajab Singh and others as mentioned in Para 6 of the claim Statement are still in the employment of the opposite party the services of the workman were dispensed with at such point of time while sufficient work was available with the opposite party. In this way the O.P. has flouted the provisions of Section 25G of the ID Act.

5. It is also stated that fresh hands were employed by the opposite party ignoring the legitimate claim of the workman.

6. Lastly it has been prayed that he be reinstated in the services of the opposite party with full back wages and all consequential benefits.

7. Opposite party has filed written statement alleging that the claimant has not mentioned the date of engagement. In reply to in respect of Para 4 of the claim statement wherein the claimant has claimed that he was granted status of monthly rated casual labour and he was also issued a medical certificate, the aversions of this Para has not been clearly denied by the opposite party. It is stated that the entire claim of the claimant cannot be verified as he has not mentioned the date of engagement. It is also stated that the claim is highly belated therefore he is not entitled for any relief and the claim of the workman is liable to be rejected.

8. Claimant has filed his documentary as well as oral evidence.

9. He has filed a certificate of railway which is paper no. 13/4 and a medical certificate bearing no. 045258.

10. The claimant has adduced himself as w.w.1.

11. Despite several opportunities opposite did not file any document despite there was specific order of this tribunal dated 12.05.08, wherein the then learned P.O. has ordered that the opposite party has failed to file the original documents photocopies of which as been filed and a legal presumption shall be taken according to law.

12. I have considered the evidence of w.w.1 in the light of the aforesaid documents. He has stated on oath that he was engaged by the opposite party in the year 1976 as a casual labour. He was given salary on the pay sheet. Initially he joined the duties at Etawah. He was also sent to Phaphund Station Shikohabad, Tundla and Aligarh. After working work for 120 days he was given temporary status. After working for 735 days he was sent for medical examination on 24/11/82. He continuously worked after medical till 28.04.83.

13. He was medically examined at Tundla. At the time of termination he was not issued any notice or given any compensation.

14. He has also stated on oath that persons like Sri Girand Singh, Ajab Singh, Jagdish, Ram Parkas etc., are still working in the same organization and he is out of employment. He also stated that after his termination new recruitments were also made in the year 1984.

15. I have examined the facts and circumstances of the whole case. It is a fact that the opposite party despite several opportunities did not adduced any oral or documentary evidence in support of their pleadings. It is also a fact that without evidence pleading do not take the shape of prove.

16. On the other had workman has proved his case by his evidence on oath before the Tribunal and he has been thoroughly cross examined but the opposite party did not deny employment of the workman as well as deny the temporary status given to the workman after his medical examination by the opposite party. They had not denied the fact that the workman had not been medically examined. There is no cross on this point. In the end they have put a specific question that when there was a need of the services of workman he was engaged and when there was no work then he was removed. This question shows that the opposite party has clearly accepted the engagement of the workman. Now the question arises that a workman who has put in his service from 1976 till 28.04.83 than a notice a notice under section 25F of I.D. Act must have been issued and retrenchment compensation ought to have been paid to him by the management. But since compliance of section 25F of the Act have not been complied with by the opposite party therefore, the tribunal is bound to arrive at a definite finding that the management in the case of the workman has breached the provisions of Section 25F of Industrial Disputes Act, 1947.

17. I have considered the documents filed by the workman which is paper no. 13/4, though it is photocopy the original of which was summoned from the opposite party but they failed. this document also bears the stamp of the railway and the next document is medical certificate vide no. 045258. This has been referred by w.w.1 in his evidence and there is no cross on this document. When the opposite party did not filed the original of this document despite orders the evidentiary value can be considered in favour of the workman coupled with his statement.

18. The workman has specifically stated that he was engaged in 1976, though in the claim statement this period was left blank. in this way if it is a typing mistake or otherwise due to misunderstanding, his case is being proved then he cannot be denied the benefit only on this point that there was something blank regarding the period of engagement.

19. Whereas, other pleading of the workman was very specific and clear.

20. Therefore, the contention of the opposite party on this point is neither sustainable nor acceptable.

21. There is one more contention of the opposite party in the arguments that as the workman was serving PQRS so they should also have been made a party.

22. I have considered this contention but do not find any weight.

23. DRM, NCR, Allahabad and Asstt. Engineer, has been made a party to the present case and I think that both are liable to be sued.

24. Therefore considering all the facts and circumstances of the case, I am of the view that the workman has been able to prove his case and the disengagement of the workman *w.e.f.* 29.04.83, without complying with the provisions of Section 25F and 25G of Industrial Disputes Act, 1947, is held to be a absolutely illegal and unjustified.

25. It is a fact that he was disengaged in the year 1983 and now it is year of 2013. It is also a fact that he has raised his dispute for the first time before the Assistant Labour Commissioner in the year 2004.

26. Therefore, in the given circumstances it would be just and proper for both the parties if workman is awarded in amount of compensation to the extent of Rs. 40.000/- in lieu of reinstatement.

27. Accordingly the reference is answered in the above terms.

RAM PARKASH, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2013

का०आ० 2642.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बरैली कारपोरेशन



बैंक लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट (संदर्भ संख्या 205/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[सं० एल-12012/175/96-आई आर (बी)]  
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2642.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 205/97) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Bareilly Corporation Bank Limited, and their workmen, received by the Central Government on 29/11/2013.

[No. L-12012/175/96-IR (B)]  
SUMATI SAKLANI, Section Officer

#### ANNEXURE

**BEFORE SRI RAM PARKASH, HJS. PRESIDING  
OFFICER, CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, KANPUR**

**Industrial Dispute No. 205 of 97**

#### Between

Sri Dinesh Kumar,  
C/o Sri H. C. Ahuja,  
C-14, New Agra,  
Agra.

And

The Manager,  
Bareilly Corporation Bank Limited,  
Mahatama Gandhi Marg,  
Agra.

#### AWARD

1. Central Government, Mol, New Delhi, *vide* notification No. L-12012/175/96 (IR) (B), dated 08.09.97, has referred the following dispute for adjudication to this tribunal.

2. Whether the action of the Bareilly Corporation Bank Limited Agra is justified to terminate the service of Sri Dinesh Kumar workman with effect from 21.08.95? If not he is entitled to what relief?

3. Brief facts are—

4. It is the case of the claimant that he was engaged as a water boy on daily rate basis at Rs. 15 per day on 21.03.94 without issue of any appointment letter by the erstwhile Bareilly Corporation Bank, Mahatama Gandhi

Branch at Agra. He continuously worked till 19.08.95 with full satisfaction to his superiors. It is stated that the claimant with effect from 21.3.94 till his retrenchment had worked continuously and prior to 21.3.94 he had also worked with the erstwhile bank. It is also claimed by the workman that besides performing the work of water boy he had also worked as a full time peon in the erstwhile bank. Some time he was used to work stitching of bundles of note, counting of notes and preparing bundles of notes. During those days the pay of a regular peon was Rs. 1500 per month. The erstwhile bank used to pay his wages through vouchers prepared in his name after obtaining his signature on the vouchers. Despite the fact that although he was given artificial breaks by the erstwhile bank yet he had completed 240 days of continuous service during the period 21.03.94 to 13.05.95.

5. It may be pointed out that the date of termination mentioned initially in the reference order as 13.05.95 was subsequently modified as 21.08.95 by corrigendum issued by Mol *vide* letter dated 21.01.99.

6. It is also alleged that during the period 13.5.95 to 18.08.95, his daily work wage was enhanced at Rs. 20 per day and the said wages were prepared in the name of peon Devendra Kumar and Daftary Ram Kumar but actual payment was received by him.

7. Erstwhile bank has thus committed unfair labour practice. The workman was prevented from performing his duties by the erstwhile bank with effect from 21.08.95 without showing any reason which amounts to retrenchment in the eye of law as provided under the provisions of Industrial Disputes Act, 1947. He was also not offered any compensation by the opposite party (erstwhile bank).

8. The workman has also stated that after his termination of service he is unemployed.

9. Therefore, it is claimed by the workman that termination of his service is thus illegal and unjust and his retrenchment is liable to be set aside. It is prayed by him that he be reinstated in the service with full back wages and all consequential benefits together with seniority.

10. Opposite party has filed written reply denying the claim of the workman in its entirety. On the ground of preliminary objection it has been stated by the opposite party bank that the service of the workman were never terminated with effect from 13.05.95 or from any other date. It is stated that in the bank premises one bore well was provided by the land lord for drinking water which stopped working in the March 1994. During those days municipal tap water was highly pollute and was unfit for human consumption. When after efforts the bore well could not start working, hence Dinesh Kumar was engaged temporarily as daily wagger for bringing drinking water from outside the premises of the branch. The engagement of Mr. Dinesh Kumar was purely due to temporary increase of work for a specific period and for specific job which was

hardly of 2 to 3 hours in a day. It is completely denied by the bank that the workman had ever worked in the bank prior to 21.3.94. The engagement of the workman came to an end automatically when the land lord installed second bore well. Since the engagement of the workman was purely temporary for specific job hence he was paid wages for working days only.

11. Lastly it is stated by the opposite party that the reference order is not valid therefore, the workman cannot be held entitled for any relief.

12. Workman has also filed rejoinder in the case but nothing new has been stated therein.

13. Workman vide list dated 23.3.98 has filed three documents the relevancy of these documents will be discussed at the time of recording findings.

14. The workman has also filed paper no. 45/1-3, showing number of working days during the period 25.3.94 to 13.5.95 and the amount of wages received by him.

15. The opposite party bank vide paper no. 51/1 has filed 38 payment vouchers. It is also mentioned in the application that payment vouchers for dates 03.08.94, 09.08.94, 10.12.94, 04.3.95 and 18.03.95 is traceable through which the workman has been made any payment. It is also mentioned in the said application that during the period from 13.03.95 to 19.08.95, no voucher is traceable in the bank in the name of the workman. Vouchers filed by the bank are photocopies.

16. Whereas workman has examined himself as W.W.1, the opposite party examined Sri Anwar Ahmad Rizvi, Senior Manager as M.W.1.

17. Heard the arguments at length and perused the record carefully.

18. It has been argued by the AR of the opposite party that the date of termination as claimed by the claimant is stated to be 21.08-95, but there is no evidence to show that the claimant had been working after 13.5.95. In this way the claimant had worked not more than 158 days since 22.08.94 to 13.05.95 that also in broken periods.

19. It has been contended by the AR for the claimant after 13.5.95 the claimant had worked but the vouchers were prepared in the name of other persons like Ram Kumar etc.

20. I have examined the evidence in this respect. It is a fact that there is no voucher of payment in the name of the claimant after 13.05.95 as has been admitted by the claimant himself in the cross examination. In such

circumstances it is difficult to believe that the claimant had been working after 13.5.95, but the vouchers were prepared in the name of others and signed by those persons like Ram Kumar Devender Kumar. When the vouchers are not in the name of the claimant then it is difficult to say that the work was being taken from the claimant. Moreover he had not made any complaint in this behalf at that time or thereafter.

21. It is also a fact he was not appointed as regular employee he was not issued any appointment letter. He was engaged as a water boy in the Bareilly Corporation Bank Limited which was subsequently amalgamated with Bank of Baroda. Though the claimant has filed the claim petition against Bank of Baroda, whereas in the reference the Bareilly Corporation Bank has been impleaded. It is also admitted fact that there is no sanctioned post of water boy, whenever the regular sub staff is on leave in that circumstances the bank engages the services of some person on daily casual basis for bringing water etc.

22. I have seen the application paper no. 45/1-3 filed by the claimant. It is details of the days as shown by the claimant. It is not a summoning application. I have also examined the documentary evidence filed by the claimant vide list 21/1 and have also examined the vouchers of the work done filed by the opposite party vide list 52/1. These vouchers are paper no. 52/2-38. Opposite party has also filed certain vouchers vide list 22/1 and these vouchers paper no. 22/2-19. The AR of the opposite party prayed that later on certain vouchers which were traced has also been filed but they have not with held any vouchers after 13.05.95 till 21.08.95 in the name of the claimant.

23. The opposite party has contended that claimant has not been able to show that he had worked continuously for 240 days or more in a calendar year.

24. The opposite party has placed a reliance upon a decision 2008 Lab IC 4210 SC Rani Nagar Palika versus Babuji Ghabbaji Thakor and others. In this case the Hon'ble Apex court held that the claim of workman of 240 days continuous working, burden of proof lies on the workman.

25. Similarly they have placed reliance upon a decision J.T. 2005 (11) S.C. 87 DGM Oil & Natural Gas Corporation Limited versus Illas Abdul Rahman, wherein the Hon'ble Apex Court held-services interrupted by broken periods cannot be taken continuous employment for the purpose of section 25F of the Act. Similarly in this case he had worked at different places also.

26. Therefore, coming to the present case from the examination of oral as well as documentary evidence, it cannot be held that the date of termination is 21.08.95 and

it cannot be held that from the date of termination preceding 12 months he has completed 240 days or more continuously.

27. Accordingly it is held that workman is not entitled to any relief in pursuant to the present reference.

28. Reference is answered accordingly in favour of the management and against the workman.

Dt. 08/04/13

RAM PARKASH, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2013

का.आ. 2643.—औद्योगिक विवाद अधिनियम, 1947 ( 1947 का 14 ) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडसिंड बैंक लिमिटेड प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 11/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[सं एल-12012/79/2012-आईआर (बी-1)]  
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2643.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No 1, Chandigarh No 1 as shown in the Annexure, in the industrial dispute between the management of Indusind Bank Limited, I.B. Ltd. Registered Office, Human Resources, Indusind Bank Ltd. and their workmen, received by the Central Government on 29/11/2013.

[No.L-12012/79/2012-IR(B-I)]  
SUMATI SAKLANI, Section Officer

#### ANNEXURE

**BEFORE SHRI SURENDRA PRAKASH SINGH,  
PRESIDING OFFICER, CENTRAL GOVT.  
INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT-I, CHANDIGARH**

**Case No. ID No. 11/2013**

Deepankar Malik S/o of Shri Subhash Malik, resident of House No. 49, New Bank Colony, Street No. 3, Khanna-141401.

....Applicant

*Versus*

1. The Manager, Indusind Bank Limited, SCO 12-13, Canal Colony near NRI Silk, Ludhiana (Punjab).

2. The Chairman/Managing Director, I.B. Ltd., Registered Office, 2401, Gen. Thimmayya Road, Pune-411001.

3. Ruchi Dhawan Sharma, Human Resources, Indusind Bank Ltd., 161/4 B, 6th Floor, Gulmohar House, Yusuf Sarai, New Delhi - 110016.

....Respondents

#### Appearances:

For the workman : Workman is present.

For the management : Shri N.K. Zakhmi Advocate along with

Shri Anurag Taneja, Manager HR

#### AWARD

Passed on: — 12/11/2013

Central Govt. vide notification No. L-12012/79/2012-IR(B-I) dated 21.3.2013 has referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of the Indusind Bank Ludhiana in terminating the services of Shri Deepankar Malik w.e.f. 24.4.2012 is just and legal? If not, then to what relief the workman is entitled and from which date?"

2. Case taken up today for hearing. Workman Deepankar Malik and representative of the management Shri N.K. Zakhmi placed on record settlement dated 6.11.2013. Workman also made statement that he is filling the settlement dated 6.1.2013 arrived at between the management of the Bank and the workman and he has carefully understood the settlement which is also signed by him and Shri Anurag Taneja Manager HR posted at Chandigarh and also endorsed by representative of the management and father of the workman. He also made a statement that he is filling the same today and same may be taken on record and in view of the settlement, he withdraw the present reference. Shri Anurag Taneja Manager HR of the management who is signatory to the settlement also made a statement that he has been authorized by the Head Office of his bank to sign the settlement dated 6.11.2013 and he signed the same on behalf of the management and under directions of the Head Office.

3. In view of the above settlement the present reference is disposed off, Central Govt. be informed. Hard copy as well as soft copy be sent to the Central Govt. for publication.

Chandigarh.

S.P. SINGH, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2013

**कांआ 2644.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार उत्तर रेलवे प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण/न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 64/2001) को प्रकाशित करती है, जो केंद्रीय सरकार को 29.11.2013 को प्राप्त हुआ था।

[सं एल-41011/4/2001-आई आर (बी-1)]  
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2644.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 64/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway, and their workmen, received by the Central Government on 29-11-2013.

[No. L-41011/4/2001-IR(B-I)]  
SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

##### Present:

Dr. Manju Nigam, Presiding Officer

I.D. No. 64/2001

Ref. No. L-41011/4/2001/IR (B-I) dated: 11.04.2001

##### BETWEEN

The Divisional Secretary  
Railway Mazdoor Union  
IInd, 50 - J, C.P.H. Colony, Charbagh,  
Lucknow (U.P.) - 226 001.  
(Espousing cause of 15 workmen)

##### AND

The Dy. Chief Engineer (Bridge)  
Northern Railway Bridge Workshop,  
Charbagh

Lucknow (U.P.) - 226 001.

##### AWARD

1. By order No. L-41011/4/2001/IR (B-I) dated: 11.04.2001 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of

the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Divisional Secretary, Railway Mazdoor Union, IInd, 50 - J, C.P.H. Colony, Charbagh, Lucknow and the Dy. Chief Engineer (Bridge), Northern Railway Bridge Workshop, Charbagh, Lucknow for adjudication.

2. The reference under adjudication is:

"Whether the Demand for Regularization of 15 Workers (Mentioned in the List) by the Management of Dy. Chief Engineer (Bridge), Northern Railway, Lucknow is Justified? If yes, what Relief Workmen are entitled?"

3. The case of the workmen's union, in brief, is that the workman Shiv Dutt and 14 others were appointed under the opposite party and were entitled for regularization after completion of 180 days continuous service by giving them temporary status and all other related benefits. It has been alleged by the workmen's union that the management of railways failed to regularize the services of the workmen on the dates, the workmen completed 180 days continuous services and also the management granted temporary status to the workmen much after their due dates as shown against their names in the column No. 7 of the list enclosed to the reference order. Accordingly, the union has prayed that the workmen be held entitled for regularization after granting temporary status on completion of 180 days continuous services as shown in column No. 6 of the list enclosed with the reference order.

4. The management of the railways has disputed the claim of the workmen's union by submitting its written statement; wherein it has submitted that the all the 15 workmen were engaged by the management of railways as daily rated casual labourer from time to time as per requirement, with intermitted gap and were granted temporary status when they had completed 120 days continuous service. It is specifically mentioned by the management that all the workmen were regularized and absorbed by the management after screening test and medical examination as per sanctioned strength and approval of the competent authority. The management has also submitted that the dispute raised by the workman is stale one as the same has been raised after lapse of 30 years. The management has also disputed the dates mentioned in column 5 and 6 of the list enclosed to the reference order as the same are not supported with any documentary evidence. The management of the railways has submitted that the relief sought has already been given to workmen concerned and accordingly no claim exists against the management therefore, the claim of the workmen's union may be rejected without any relief to the workmen concerned.

5. The workman's union has filed its rejoinder; wherein it has not brought any new fact apart from reiterating the averments already made in its statement of claim.



6. The parties have filed documentary evidence in support of their respective claim. The workman's union filed affidavit of the Shri S.N. Srivastava, Divisional Secretary of the union whereas the management filed affidavit of Shri D.C. Goyal, Executive Engineer, Bridge Workshop in support of their stand. The management got its witness cross-examined; whereas the workman union's witness, the Divisional Secretary, during the cross-examination was directed to file the list of witnesses whom he wants to get examined *vide* order dated 17.06.2003; but he failed to do so. The workman's union kept absenting itself since 26.05.2011 and did not bother to forward its argument, accordingly, keeping in view long pendency of the case since 2001, heard arguments of the representative of the management and reserved the file for award.

7. Heard representatives of the management and scanned entire evidence on record.

8. The reference under adjudication is regarding demand of 15 workmen for regularization and in this regard admittedly the service of all the workmen, involved in the dispute, have been regularized by the management of the Railway. Now the workman's union has come up with the statement of claim, before this Tribunal, that although the management of the railway has regularized the services of all the 15 workmen; but it has not regularized their services from the date they completed mandatory period of 180 days for grant of temporary status, which was much before the actual date of grant of temporary status by the management. In this regard the workman has relied on the column No. 06 of the list enclosed with the reference order. None of the workmen were examined in spite of the direction to the Divisional Secretary of the union to file the list of witnesses *vide* order dated 17.06.2003. The union has also not adduced any reliable documentary evidence which goes to show the date of actual appointment/engagement of the workmen and their working detail to ascertain the fact as to when they completed the 120 days' mandatory working for grant of temporary status to them.

9. Per contra the management of the railways has come up with the case that the workmen concerned were engaged to carryout casual nature of work as per requirement from time to time and worked with railway with intermittent gap. It is also the case of the management that the workmen got temporary status after they completed 120 days continuous service; moreover the services of all workmen were regularized after screening test and other requirement as per Rules. The management has filed copy of notice dated 29.10.2001 issued by Dy. Chief Engineer, Bridge Workshop, Northern Railway, Lucknow to show that all the 15 workmen have been regularized and four of them have retired also.

10. Having gone through terms of reference and rival pleadings of the parties it comes out that the workman union's case revolves round the stand that the pleading

that the management granted the temporary status/regularization much after the date the workmen completed 120 days of continuous service. On the contrary, the management's case is that the terms of reference require this Tribunal to adjudicate upon the demand of the workmen for regularization; and since the management has already regularized the services of the workmen, therefore, there remains nothing to adjudicate upon by this Tribunal. It has also contended that the terms of reference cannot be stretched upon by this Tribunal.

11. Hon'ble Rajasthan High Court in the case of the Management, M/s. Rambagh Palace Hotel Ltd. V. State of Rajasthan 2000 (86) FLR 134 observed as under:

"It is settled law that the Industrial Tribunal can only adjudicate the reference made to it by the Government and cannot substitute its own reference or terms of reference or even cannot go beyond the terms of the reference. It is the function of the Tribunal to answer the reference as is referred to and once the reference has been made on the demand made by the workers/union, it is incumbent on the Labour Court or Industrial Tribunal to decide the same....."

In *Tarsem Singh Vs. Judge, Labour Court & Others* 2008 (116) FLR 346, it was held as under:

"8. The Labour Court cannot enlarge the scope of reference nor can it deviate therefrom. It may be observed that the Labour Court derives its jurisdiction from the reference made by the appropriate government and, therefore, it is bound to act within the four corners of the reference.

Hon'ble Supreme Court, in the case of *State Bank of Bikaner and Jaipur Vs. Om Prakash Sharma* 2006 (109) FLR 1203 laid bare the well settled proposition of law and, in the context, categorically held as follows:

"In the instant case, the award of the Labour Court suffers from an illegality, which appears on the face of the record. The jurisdiction of the Labour Court emanated from the order of the reference. It could not have passed an order going beyond the terms of reference. While passing the award, if the Labour Court exceeds its jurisdiction, the award must be held to be suffering from a jurisdictional error. It was capable of being corrected by the High Court in exercise of its power of judicial review. The High Court, therefore, clearly fell in error in refusing to exercise its jurisdiction. The award and the judgment of the High Court, therefore, cannot be sustained....."

12. Since the reference has been made on the issue regarding regularization, which includes demand for

regularization of 15 workmen; whereas the union has prayed that the workmen be held entitled for regularization after granting temporary status on completion of 180 days continuous service from some back date. The management, on the contrary, has contended that the workman has already been regularized after grant of temporary status when they completed 120 days continuous service and this fact has not been denied by the workman's union, therefore, nothing remains for this Tribunal to adjudicate upon. In view of the observations of the Hon'ble Apex Court as discussed above, it would not be appropriate for this Tribunal to take up the matter of regularization of the workmen from some back date, which is not referred to this Tribunal for adjudication.

13. In view of the facts and circumstances of the case and law pronounced by Hon'ble Apex Court, I am of considered opinion that there left nothing to adjudicate upon as the relief sought by the workman's union has already been granted to the workmen whose cause has been espoused under present reference.

14. The reference under adjudication is answered accordingly.

15. Award as above.

Lucknow.

14th November, 2013

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2013

**का.आ. 2645.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) कि धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 35/2005) को प्रकाशित करती है, तो केन्द्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[सं एल-12012/298/2004-आईआर(बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2645.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of State Bank of India, Local Head Office, Naveen and their workmen, received by the Central Government on 29/11/2013.

[No. L-12012/298/2004-IR(B-I)]

SUMATI SAKLANI, Section Officer

## ANNEXURE

### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

#### PRESENT:

Dr. Manju Nigam, Presiding Officer

**I.D. No. 35/2005**

Ref. No. L-12012/298/2004-IR(B-I) dated: 26.06.2005

#### BETWEEN

Shri Rajendra Prasad Shukla, S/o Shri Sudhakar Shukla  
H.No. L-1/177, Sector-B  
Priyadarshini Colony, Sitapur Road  
Lucknow.

#### AND

The Chief General Manager  
State Bank of India, Local Head Office  
Naveen Prashasnik Bhawan, Moti Mahal Marg,  
Hazratganj, Lucknow

#### AWARD

1. By order No. L-12012/298/2004-IR(B-I) dated 26.06.2005 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Rajendra Prasad Shukla, S/o Shri Sudhakar Shukla. H. No. L-1/177, Sector-B, Priyadarshini Colony, Sitapur Road, Lucknow and the Chief General Manager, State Bank of India, Local Head Office, Naveen Prashasnik Bhawan, Moti Mahal Marg, Hazratganj, Lucknow for adjudication.

2. The reference under adjudication is:

"Kya bank prabandhan, bhartiya state bank, Lucknow dwara Shri Rajendra Prasad Shukla putra Shri Sudhakar Shukla, Chaturth Shreni Kamkaar, Gram Hirpur, Daakghar Houriya (Sidhauri) Jila Sitapur se 22.8.2000 ko maukhik aadesh dwara naukari se nikal diya jane ke baad dinank nayayochit hai? Yadi nahi, to karmkaar kis paritoshik ko pane ka adhikaari hai?"

3. The case of workman, Rajendra Prasad Shukla, in brief, is that he was engaged by the bank, as fourth class employee, for the first time in September, 1992 to December, 1992 and thereafter he was re-engaged in January, 1993 and worked as such continuously, without any break, up to 21.08.2000 when his service was terminated by an oral order. The workman has alleged that the management terminated his services in violation to the provisions contained in the Section 25 F of the I.D. Act, 1947 without taking into account the fact that he worked for more than 240 days in each 12 calendar months of each year.

Accordingly, the workman has prayed that his termination be set aside and he be reinstated with retrospective effect with full back wages and other consequential benefits.

4. The management of the bank has disputed the claim of the workman by filing its written statement wherein it has stated that the workman was never been engaged against any permanent post, as such there exist no relationship of employer and employee between the bank and the workman concerned; hence, there arise no question of terminating his services at any point of time. The management has also submitted that there are prescribed norms for appointment in the Bank and the workman never under gone through them; moreover, the service of the workman were availed by the Bank, intermittently, for doing casual nature of work as an when required by the Bank and he was never engaged for 240 days as alleged by the workman. The management has submitted that the workman is actually a driver and works for one M/s. Universal Travel Corporation which was engaged by the bank for transporting cash etc. as well as for commuting its officer/ staff from time to time and the workman was paid for his services by the said travelling agency. Accordingly, the management has prayed that considering the facts and circumstances of the case the claim of the workman is liable to be rejected without any relief to him.

5. The workman has filed its rejoinder; wherein he has not brought any new fact apart from reiterating the averments already made by him in his statement of claim.

6. The parties have filed documentary evidence in support of their respective claim. The workman examined himself whereas the management examined Shri Sunil Kumar Yadav, Shri Vinod Kumar Baijal and Miss D. Munshi in support of their stand. Parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral submissions.

7. Head representatives of the parties and scanned entire evidence on record.

8. The authorized representative of the workman has contended that in spite of the fact that the workman worked for more than 240 days in a calendar year, his services were terminated w.e.f. 22.08.2000; without any notice or compensation, in violation of the provisions contended in Section 25 F of the I.D. Act.

9. Per contra the authorized representative of the bank has argued that the claim of the workman is not maintainable in view of the fact that there existed no relationship of employer and employee between the Bank and the workman as he was neither appointed against any permanent post nor he was ever subjected to the prescribed procedure for appointment in the Bank. Also, the workman has failed to discharge the burden that lied upon him by adducing any material documentary evidence to show that he worked for 240 days in a calendar year.

10. I have given my thoughtful consideration to the rival contentions of the representatives of the parties.

11. The workman in his statement on oath has stated that he has been engaged by the management of the bank as daily rated labour in the Gomti Nagar branch of the bank in January, 1993 and from there he was transferred to the Secretariat Branch on 31.07.93, where he worked up to 21.08.2000 regularly. He has dined that he used to drive taxi of M/s. Travel Corporation. He also stated that he has no certificate regarding appointment, transfer or termination of his services. The workman has filed photocopy of as many as three documents in support of his claim vide list dated 11.05.2006 i.e. two letters dated 09.02.2000 and pass book of State Bank of India, paper No. C-13 to C-15. He has also filed photocopy of Secretariat Pass, paper No. 4/12 to 4/18 in support of his claim. But he has not filed any documentary evidence regarding his working with the Bank such as payment vouchers, muster roll etc. nor has tried to summon them from the management. But the document filed by the workman i.e. photocopy of front page of pass book of the workman goes to show that he has an account in the State Bank of India but it does not go to show that he is an employee of the Bank; likewise the photocopy of two letters dated 09.02.2000, filed by the workman does not show that he was an employee of the Bank and he worked for alleged period.

12. In rebuttal, the management witnesses, Shri Sunil Kumar Yadav, Shri Vinod Kumar Baijal has stated that the workman used to come in the Bank as driver of Universal Travel Corporation and the paper No. C-1/21 to C-103 are receipts showing payment made to the workman through travel agency. One of the witness Miss D. Munshi stated that for entering into Secretariat Branch of the Bank no 'pass' is required. The management has filed photocopy of the payment receipts in respect of Universal Travel Corporation vide list dated 16.06.2006, paper No. C-1/21 to C-103. There is no cross-examination over these receipts from the management witnesses.

13. In the instant case, the workman come forward with the case that he has been engaged as daily wage by the bank management initially from September, 1992 to December, 1992 and thereafter he was re-engaged in January, 1993 and worked as such continuously, without any break, up to 21.08.2000 when he service have been terminated by an oral order in contravention to the provisions of Section 25 F of the Industrial Disputes Act, 1947 as he worked for more than 240 days in each calendar year. Apart from pleading he has not filed any substantive document either payment voucher or attendance sheet or muster roll to substantiate his version that he worked with the management for alleged duration with the management; even he has not tried to summon any of these from the management.

14. It is settled position of law that if a party challenges the legality of order the burden lies upon him to prove illegality of the order and if not evidence is produced, the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination order and to prove the termination order was illegal. It was the case of the workman that he had worked for more than 240 days in a calendar year. This claim has been denied by the management; therefore, it was for the workman to lead evidence, documentary as well as oral, to show that he had in fact worked for 240 days in the year preceding his alleged termination. In (2002) 3 SCC 25 Range Forest Officer Vs S.T. Hadimani Hon'ble Apex Court has observed as under:

"It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filling of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside."

In Surenderanagar Panchayat and another v. Jethabhai Pitamberbhai 2005 (107) FLR 1145 (SC) Hon'ble Apex court came to the conclusion that where the workman failed to prove that he had been in employment with the employer for a period of 240 days uninterruptedly, he is not entitled to protection in compliance of section 25-F of the Industrial Disputes Act, 1947. It was held by the Hon'ble Supreme Court that the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of termination to decide the question of the continuous service for the purposes of section 25-F of the Industrial Disputes Act, 1947. Further, Hon'ble Apex Court has observed as under:

"The claimant, apart his oral evidence has not produced any proof in the form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240 days to get the benefit under section 25-F of the Industrial Disputes Act. It is now well settled that it is for the claimant to lead evidence to show that he in fact worked for 240 days in a year preceding his termination."

15. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in 2006 (108) FLR R.M. Yellatti & Asstt. Executive Engineer as follows:

"It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under

section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management."

16. In the present case the workman has pleaded/stated that he has worked continuously for more than 240 days, but has not produced any document either original or photocopy in support of his oral evidence nor summoned the documents from the management. The burden was on the workman to show by the way of cogent evidence that he actually worked for 240 days in the preceding 12 months from the date of his alleged termination *i.e.* 22.08.2000; but he failed to do so, as he could not bring this fact on record. In view of denial of the management regarding his claim, the workman has nothing to support his version, except his own statement before this Tribunal, which does not suffice the matter. Thus, the workman failed to prove through cogent evidence that he is the person who actually worked with the management of the Bank and his services have been terminated in violation to the provisions contained in Section 25 F of the I.D. Act, 1947.

17. Mere pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work for 240 days in a year preceding the date of alleged termination was on the workman but he has failed to discharge the above burden. There is no reliable material for recording findings that the workman had worked for 240 days in the



preceding year from the date of his alleged termination and the alleged unjust or illegal order of termination was passed by the management.

18. Accordingly, the reference is adjudicated against the workman Rajendra Prasad Shukla; and in my opinion he is not entitled to any relief.

19. Award as above.

LUCKNOW.

12th November, 2013.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2013

का.आ. 2646.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार मध्य रेलवे प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, मुम्बई के पंचाट (संदर्भ संख्या 12/2007) को प्रकाशित करती है, जो केंद्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

रसं. एल-41012/62/2006-आई आर (बी-1),  
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2646.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Mumbai as shown in the Annexure, in the industrial dispute between the management of Central Railway, Near New Reservation Centre, and their workmen, received by the Central Government on 29/11/2013.

[No. L-41012/62/2006-IR(B-I)]  
SUMATI SAKLANI, Section Officer

#### ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL No. 1, MUMBAI**

#### PRESENT

JUSTICE G. S. SARRAF, Presiding Officer

**REFERENCE No. CGIT-1/12 OF 2007**

#### PARTIES:

Employers in relation to the management of  
Central Railway

And

Their workman (Shantuben J. Solanki)

#### APPEARANCE

For the first party : Smt. Pooja Kulkarni, Adv.  
For the workman : Shri Vasant J. Ambedkar, Adv.  
State : Maharashtra

Mumbai, dated the 28th day of February, 2013

#### AWARD

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference given in the schedule are as follows:

Whether the action of the Central Railway is justified in executing personnel services (Sweepers) on contract basis against the Permanent Vacancy? If not, whether the demand of Smt. Shantuben J. Solanki is justified for reinstatement in Central Railways on permanent vacancy with full back wages *w.e.f.* 30.4.2005 and continuity of service *w.e.f.* 1.1.1991? If so, what are the relief, the workman Smt. Shantuben J. Solanki is entitled to?

2. According to the statement of claim Shantuben J. Solanki was initially employed by Executive Engineer (Central) Central Railway, Near New Reservation Centre, Jawahar Marg, Ghatkopar, Mumbai as a sweeper from Jan. 1991. The workman worked continuously for more than 240 days in every year from January 1991 to 1994. The workman was transferred at Vashi Railway Station in 1995 and she worked at Vashi Railway Station from 1995 till her oral termination on 30.4.2005. The workman was paid rupees two thousand per month by the first party. The superiors of the workman obtained her signatures on some forms and letters as if she was a contractor/contract workman of the first party. The paper arrangements made by the first party to deny the workman her legitimate claim as a workman were illegal. The workman was required to clean the premises of the office of Executive Engineer as well as the office of the Central Railway Station at Ghatkopar and after her transfer at Vashi Railway Station. Sweeping was regular nature of work which could not be given on contract basis. The workman was on duty from 8.00 am to 6.00 pm and she was required to do the work of peon also. After her termination she tried to get alternative employment but she could not get any. The workman has, therefore, prayed that she be reinstated with full back wages and continuity of service.

3. According to the written statement Engineering (Construction) department is entrusted with the

construction work of Central Railway. The office of the said department was situated at Wadala and then at Vashi. Since the work was project based the Railway Administration did not depute a permanent sweeper to clean the premises. Deputy Chief Engineer (Construction) under the powers vested in him and after complying with Rules and Regulations invited applications for performing the said job on fixed term basis. The workman amongst others responded and since the quotation submitted by her was lowest her quotation was approved. The said procedure continued at the end of every term from time to time and every time new quotations were invited and since her quotations used to be lowest the Competent Authority approved the same. The workman fixed term expired on 27.4.2005 and the first party once again invited the quotations from interested persons. The quotation of one Sitabai was found to be lowest and hence the Competent Authority approved to award the work to her. According to the written statement the office of Chief Engineer (MTP) situated at 7th floor, N.A. Building at Mumbai CST was shifted and thereafter two permanent sweepers were rendered surplus. The first party deputed one departmental safaiwala to the office of Deputy Chief Engineer (Construction) at Ghatkopar. Presently no fixed term appointee is performing the work of sweeper. According to the written statement the workman used to be appointed only because her quotations used to be lowest. Her last quotation was not approved because it was not lowest. It is a case of non-renewal of fixed term contract between the first party and the workman and as such there is no termination of service of the workman. It has, therefore, been prayed that the reference be rejected.

4. The workman has filed rejoinder wherein she has reiterated her stand.

5. The workman has filed her affidavit and she has been cross examined by learned counsel for the first party. The first party has filed affidavit of Felicia Alorsius Anthony and she has been cross examined by learned counsel for the workman.

6. Heard Shri Amberkar learned counsel for the workman and Smt. Pooja Kulkarni learned counsel for the first party.

7. the question as per the schedule is that whether the first party was justified in engaging the workman on contract basis against permanent vacancy.

8. I have not been shown any law or rule whereby the first party was prohibited to engage the workman to do the job of sweeper on contract basis against the permanent vacancy. It is thus clear that it was not illegal

for the first party to get the work of cleaning done on contract basis.

9. No post was advertised. No names were called for interview through Employment Exchange. None was interviewed. The workman did not pass through any medical test. No appointment letter was issued in favour of the workman. There is absolutely no evidence on the record to establish a relation of employer-employee between the first party and the workman. As a matter of fact the workman responded to the invitation of quotations issued by the first party and since her quotations were found to be lowest in the years she worked there her quotations were approved. When her quotations were not found to be lowest then the workman was not allotted work.

10. It is thus clear that the demand made by the workman is not at all justified.

11. The workman is not entitled to any relief.

Award is passed accordingly.

Justice G. S. SARRAF, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2013

**कांआ 2647.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) के धारा 17 के अनुसरण में केंद्रीय सरकार कृष्णा ग्रामीण बैंक के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 8/2011) को प्रकाशित करती है, जो केंद्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[सं एल-12012/29/2010-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2647.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 8/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Krishna Grameena Bank, Head Office, and their workmen, received by the Central Government on 29/11/2013.

[No. L-12012/29/2010-IR (B-I)]

SUMATI SAKLANI, Section Officer

**ANNEXURE****BEFORE THE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, BANGALORE**

DATED : 4th APRIL 2013

**PRESENT** : SHRI S.N. NAVALGUND, PRESIDING  
OFFICER**C R No. 08/2011****I Party**Sh. Muzamil Pasha,  
S/o Sh. Shadul Pasha,  
Ex-Clerk-cum-Cashier,  
R/o Kanchawaram,  
Chincholi Tq,  
Distt: Gulbarga.**II Party**The Chairman,  
Krishna Grameena  
Bank, Head  
Office, P B No. 4,  
Kusnoor Road,  
Gulbarga-585 105.**Appearances :**

I Party : Nil

II Party : Sh. B C Prabhakar  
Advocate**AWARD**

1. The Central Government by exercising the powers conferred by Clause (d) of Sub-section (1) of Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute *vide* Order No. L-12012/29/2010-IR(B-I) dated 01.04.2011 for adjudication on the following schedule:

**SCHEDULE**

"whether the action of the management of Krishna Grameena Bank, Gulbarga in terminating the services of Shri Muzamil Pasha S/o Shri Shadul Pasha, Ex-Clerk-cum-Cashier *w.e.f.* 26/6/2007, is legal and justified? To what relief the workman is entitled?"

2. On receipt of the reference registering it in C R 08/2011 when notices were issued to both the sides, the II Party appeared through Sh. B C Prabhakar, Advocate, whereas, I party in spite of due service of notice through RPAD did not appear and file his claim statement. Since the I Party failed to put in his appearance and file the claim statement when the II Party was called upon to file statement substantiating the action taken against the I party they filed their statement contending that the I Party who was appointed on Compassionate Grounds *vide* Order of appointment dated 25.07.2006 was posted to work at Jawargi Branch for training from 26.07.2006 and was put on probation for a period of one year in terms of Regulation under 8(iv)(a)

of Krishna Gramina Bank (Officers and Employees Service Regulations, 2001) and then he was posted to its Hokrana Branch where he reported on 08.01.2007 as a Cashier and on 24.07.2007 when the Branch Manager on verification of cash at the closure of the business hours found shortage of Rs. 68,000.00 and asked the I party, he admitted having used that amount for his personal difficulties and then Branch Manager immediately informed the Area Manager about the said shortage and also submitted his detailed report in writing on 25.07.2007 and then as per the instruction of the General Manager the Area Manager visited the Branch at 09.00 a.m. on 25.07.2007 and verified the cash and found shortage of Rs. 68,000.00 and the I party who assured to make good within two days with request to not to lodge a Police Complaint did not keep up his promise the Appointing Authority terminated his services *w.e.f.* 27.07.2007 invoking the provisions of Regulations 9(ii) (a) of Krishna Gramina Bank (Officers and Employees Service Regulations, 2001) and same was served on the I Party workman with one month's salary of Rs. 6353.20 paise through Bankers Cheque in lieu of one month notice. The II party in order to substantiate its contention in the counter statement while filing the affidavit of P Shankar Rao, Chief Manager (Funds Department) in its Head Office reiterating what is stated in the counter statement examining him on oath got exhibited the certified copies of application dated 08.07.2006 submitted by I party for employment; order of appointment issued to I Party on compassionate grounds dated 24.07.2006; letter of Branch Manager dated 26.07.2006 intimating the joining of the duty by the I Party; extract Krishna Grameena Bank (Officers & Employees) Service Regulations, 2001 to show the conditions applicable to the probationer; Transfer Order pertaining to I Party from Jewargi to Hokrana Branch dated 03.01.2007; report of the Branch Manager, Hokrana Branch dated 25.07.2007; report of the Area Manager dated 25.07.2007; letter of confession given by I party dated 25.07.2007; relevant extract of vault register dated 24.07.2007; termination order issued to I party dated 26.07.2007 as Ex M-1 to Ex M-10 respectively.

3. The learned advocate appearing for the II party in his arguments submitted that the I party workman appointed on Compassionate Ground and was on probation having misappropriated a sum of Rs. 68,000.00 which was in his custody as a Cashier and failed to make good the same as undertaken by him invoking the provisions of Regulations 9(ii) (a) of Krishna Gramina Bank (Officers and Employees Service Regulations, 2001) having found him not fit for the said post his services were terminated by giving him one months salary in lieu of the notice and I party having failed to file any counter statement and rebut the evidence placed on record the reference is liable to be rejected. In support of his arguments he cited the decision reported in the case of V K Raj Industries vs. Labour Court and others reported FJR 1981 Vol 59 Page 304 wherein it is

held workmen challenging the order of termination of his service burden being on him to file written statement and prove illegality of the order, not entitled to any relief if he does not appear and prove his case.

4. The documentary evidence produced on behalf of the II party since do indicate that the I party was issued with an appointment order dated 24.07.2006 on Compassionate Grounds and after training was posted to work as Cashier at Hokrana Branch of the II party was found with shortage of Rs. 68,000.00 when cash was verified at the end of the business hours of 25.07.2007 by the Branch Manager and on asking about the same he gave in writing on 25.07.2007 having utilized the said amount for his personal difficulties and that he would make it good with further request not to make any Police Complaint. Therefore, the II party did not commit any error in terminating his services invoking the provisions of Regulation 9(ii) (a) of Krishna Gramina Bank (Officers and Employees Service Regulations, 2001) by giving one month's salary in lieu of the notice. Under the circumstances, I find no necessity to interfere in the Order of Termination of Service of I party Workman by the II party. In the result, I pass the following Order:

#### ORDER

The reference is rejected holding that the action of the management of Krishna Grameena Bank, Gulbarga in terminating the services of Shri Muzamil Pasha S/o Shri Shadul Pasha, Ex-Clerk-cum-Cashier *w.e.f.* 27/07/2007, is legal and justified and that I party is not entitled for any relief.

(Dictated to UDC, transcribed by him, corrected and signed by me on 4th April, 2013)

S.N. NAVALGUND, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2013

**का.आ. 2648.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 1078/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[सं. एल-41012/166/2001-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2648.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1078/2005) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Northern Railway, and their workmen, received by the Central Government on 29/11/2013.

[No. L-41012/166/2001 - IR(B-I)]  
SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

**Present :** Sri Kewal Krishan, Presiding Officer.

**Case No. I.D. 1078/2005**

Registered on 20.9.2005

Shri Ram Lubhaya, S/o Sh. Dharam Chand, R/o Village and Post Office Bhangala, Tehsil: Mukerian, Distt Hoshiarpur.

...Petitioner

Versus

The Divisional Railway Manager, Northern Railway, Ferozepur.

...Respondent

#### APPEARANCES:

For the workman : Sh. Mandeep Kumar Advocate.

For the Management : Sh. N.K. Zakhmi Advocate.

#### AWARD

Passed on 23-9-13

Central Government *vide* Notification No. L-41012/166/2001 [IR(B-I)] Dated 9.5.2002, by exercising its powers under Section 10 sub-section (1) Clause (d) and sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of Divisional Railway Manager, Northern Railway, Ferozepur in terminating services of Sh. Ram Lubhaya S/o Sh. Dharam Chand, Daily Rated Gangman working under PWI, Mr. Mukerian, *w.e.f.* 3-6-1985 is justified? If not, what relief the workman is entitled?"



On receiving the reference, notices were issued to the workman as well as to the management.

The workman submitted statement of claim pleading that he was appointed by the management *vide* letter No. L-8 on 15.3.1984 as a Gangman and he served with the management up to 13.6.1985 *i.e.* for a total period of 446 days. His services were terminated orally on 13.6.1985. He applied for re-employment and was selected as a Gangman by DPO at Ludhiana on 12.12.1986 but no appointment letter was issued. His case was again considered and he was selected on 13.3.1987 at Pathankot but again no appointment letter was issued. It is further pleaded that as per Standing Instructions issued *vide* letter No. 146 MED/11 Staff/Loose/P-26 the vacancies of Sanitary/Safaiwala were to be filled from the Casual Labourers and since the workman was already registered as a casual labourer, he was eligible for re-engagement and similarly situated casual labourers namely Ramesh Lal, Ram Murti and Dharam Chand were re-employed but he was denied the right to be appointed.

That since the workman worked for 446 days, his work was of regular nature which is still in existence. That his services were terminated without complying with the provisions of Section 25F, 25G and 25H of the Act as well as he was not given an opportunity of any hearing before terminating his services. That the order is illegal and prayed that termination order be set aside and he be treated in continuous service from the date of his termination with all the consequential benefits.

The management filed written reply pleading that workman was engaged on daily rate basis as a Gangman for the period in question and on completion of 120 days of service, he was sent for medical examination. Since he could not qualify the medical examination *i.e.* Bee-one he was declared unfit and his services were dispensed with. It is denied that petitioner is entitled to any employment in view of the letter No. 146-Med/11/Staff/Loose/P28 dated 4.12.1996 as the instructions contained in the said letter were withdrawn. It is denied that the persons similarly placed as that of workman were employed.

In support of his case the workman appeared in the witness-box and filed his affidavit. Workman was proceeded against *ex parte vide* order dated 4.7.2011. Thereafter the management has also examined its witness.

I have heard Sh. N.K. Zakhmi learned counsel for the management and have gone through the record

carefully. It may be added that the services were terminated on 13.6.1985 as per the case of the workman and the present reference was moved only in the year 2002. Thus the workman is guilty of laches and delay, and on this ground alone he is not entitled to any relief.

It may be added that workman has pleaded that he was selected as a Gangman on 12.12.1986, and again on 13.3.1987. But no such proceedings have been placed on the file to establish the said facts. Again there is no evidence on the file that he was entitled to get any employment as a Sanitary/Safaiwala in view of the letter dated 4.12.1986. In fact the workman did not claim any relief on the basis of the said facts and the claim is only that he worked with the management for 446 days and his services were terminated without complying with the provision of Section 25F as well as the persons junior to him were retained by the management in violation of the provisions of Section 25G. There is nothing on the file to show that the persons who were junior to the workman were retained in service by the management and it cannot be said that there is any violation of Section 25G of the Act.

The workman has pleaded that appointment letter dated L-8 dated 15.3.1984 was issued but he did not produce the same showing its terms and conditions. It is the specific case of the management that he was engaged purely on daily rate basis. While appearing in the witness-box the workman himself admit that he was working with the management intermittently. Thus the workman was a daily wager and the appointment of a daily wager comes to an end when it is discontinued. In this respect reliance may be placed on Secretary, State of Karnataka and Others Vs. Umadevi and Others and observed that:—

"Unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued."

Again it was held by the Apex Court in Himanshu Kumar Vidyarthi and other Vs. State of Bihar and others that the discontinuance of the service of a daily wager is not a retrenchment and observed in para 3 of the judgement as follows—

"Every department of the Government cannot be treated to be "industry". When the appointment are regulated by the statutory rules, the concept of "industry" to that extent stands excluded. Admittedly, they were not appointed to the posts in accordance with the rules but were engaged on the basis of need of the work. They are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of 'retrenchment' therefore, cannot be stretched to such an extent as to cover these employees. The learned counsel for the petitioners seeks to contend that in the High Court, the petitioners did not contend that it is a case of retrenchment but termination of their services is arbitrary. Since they are only daily-wage employees and have no right to the posts, their disengagement is not arbitrary.

Again in Divisional Forest Officer, Rohtak Vs. Jagat Singh and Another, it was observed in Para 4 of the judgment as follows:—

It may be noticed that the definition of retrenchment in Section 2(oo) of the Act is applicable to the provisions contained in Chapter VA containing Sections 25F and 25H of the Act. The termination of daily wage is not retrenchment falling within Section 2(oo)(bb) of the Act. Therefore, the workman who is a daily wage cannot be reinstated as it does not amount to retrenchment within the meaning of Sections 25F and 25G of the Act.

Thus the workman who was working on daily rate basis cannot claim that he has been 'retrenched' from service. There is no violation of Section 25F also.

Thus from the above going discussion, it is clear that the workman is not entitled to any relief. The reference is answered against the workman. Let hard and soft copy of the award be sent to be Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली 29 नवम्बर, 2013

**का०आ० 2649.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनाइटेड वेस्टर्न बैंक लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोल्हापुर के पंचाट (संदर्भ संख्या 3/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[सं० एल-12012/176/2002-आई आर (बी-1)]  
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2649.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 3/2002) of the Industrial Tribunal, Kolhapur as shown in the Annexure, in the industrial dispute between the management of The United Western Bank Ltd. and their workmen, received by the Central Government on 29/11/2013.

[No. L-12012/176/2002-IR(B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, KOLHAPUR

#### Reference (IT) No. 3 to 6 of 2002.

#### Reference (IT) No. 3 of 2002.

The United Western Bank Ltd.,  
Raviwar Peth, Satara.  
Thru. Its General Manager.  
Industrial Development Bank of India,  
WTC Complex, Cuff Parade, Mumbai. ...First Party

#### AND

Shri Ravindra Raghunath Ashtekar,  
2804, A Ward, Sarnaik Wada,  
Kolhapur. ...Second Party

#### Reference (IT) No. 4 of 2002.

The United Western Bank Ltd.,  
Raviwar Peth, Satara.  
Thru. Its General Manager.  
Industrial Development Bank of India,  
WTC Complex, Cuff Parade, Mumbai. ...First Party

#### AND

Shri Mahesh Prabhakar Bavadekar,  
2931, A Ward, Mahadwar Road,  
Kolhapur. ...Second Party

#### Reference (IT) No. 5 of 2002.

The United Western Bank Ltd.,  
Raviwar Peth, Satara.  
Thru. Its General Manager.  
Industrial Development Bank of India,  
WTC Complex, Cuff Parade, Mumbai. ...First Party

#### AND

Shri Mukund Ganesh Kulkarni,  
2663, A Ward, Diwan Bol,  
Kolhapur. ...Second Party

**Reference (IT) No. 6 of 2002.**

The United Western Bank Ltd.,  
Raviwar Peth, Satara.  
Thru. Its General Manager.  
Industrial Development Bank of India,  
WTC Complex, Cuff Parade, Mumbai. ...First Party

AND

Shri Prakash Baburao Pawar,  
23/1, Lay out No. 3, Baba Jarag Nagar,  
Kolhapur. ...Second Party

CORAM: SHRI K.R. PETHKAR, PRESIDING OFFICER

**APPEARANCES:** Shri S. R. Rane, advocate for the  
First Party.

Shri D.N. Patil, advocate for the  
Second Party workers.

**: COMMON JUDGMENT :**

(24.04.20313)

1. Central Government by orders dated 27.08.2002 in exercise of powers conferred under clausd(d) of Sub-section(1) and Sub-section (2A) of Section 10 of Industrial Disputes Act, 1947 referred these disputes between the above named parties for adjudication to this Tribunal in respect of the action of the management of First Party in terminating/discontinuing the services of concerned Second Party Workers.

The facts in brief are that,

2. The Second Party workers were serving with the First Party since the dates mentioned as Pigmy Deposit Collectors with clean and meritorious service record. It is alleged by the Second Party workers that their services were terminated by the First Party without following procedure laid down under the Industrial Disputes Act, 1947 w.e.f. 14.08.1996. Therefore, the Second Party workers raised dispute before Assistant Commissioner of Labour (Central) Pune, and after recording its failure, the Central Government referred these four references for adjudication.

3. The First Party workers alleged that being appointed as Pigmy Deposit Collectors, there was employee-employer relationship between the First Party and the concerned Second Party workers. It is alleged by the Second Party workers that the branch manager of First Party illegally and improperly terminated the services of the Second Party workers w.e.f. 14.08.1996. The Second Party workers alleged that they approached the concerned branch managers time to time for reinstatement. They also alleged that they were continuously ventilating their grievances. As their requests were not considered by the First Party, they sent demand notices u/s. 2-A of Industrial

Disputes Act, 1947 on 08.10.2001. The Second Party workers submitted its statement of justification on 23.10.2001 along with request letter for intervention to Conciliation Authority under the Industrial Disputes Act, 1947.

4. The Second Party alleged that they had worked for more than 240 days continuously in every year. However, to deprive them from legal status and benefits, First Party continued them on the bond as Pigmy Deposit Collectors. The Second Party alleged that the work performed by them is of perennial in nature. The Second Party workers alleged that the First Party has not paid wages on par with other employees nor given benefits.

5. It is alleged that while terminating the services of the Second Party workers the First Party has not followed proper procedure under the Industrial Disputes Act, 1947. As Pigmy Deposit Collectors they used to collect the deposits from the customers and fill in various registers. Lastly the Second Party workers alleged to allow the reference holding the termination effected is illegal, improper and bad in law. Therefore, the Second Party prayed to declare the termination effected by First Party w.e.f. 14.08.1996 as illegal and improper and bad in law with a direction to reinstate the Second Party workers with full back wages.

6. The First Party by its written statement *vide* Exh. C-7 denied all the material allegations made against it by the Second Party workers. It is contended by the First Party that reference is misconceived, baseless and untenable. The First Party alleged that the Second Party workers are not workmen within the meaning of section 2(s) of Industrial Disputes Act, 1947. The First Party disputed the relationship of employer and employee between the parties.

7. The First Party submitted that the reference is at belated stage and the approach of the of the Second Party workers is casual and careless. The First Party alleged that there is delay of 5 years and 2 months in raising dispute. The First Party alleged that it is engaged in the business of banking and Second Party workers were collecting deposits on commission basis. The First Party was not having control over the working hours of Second Party workers. The Madhu Sanchay Deposit scheme became unremunerative and uneconomical. Therefore the First Party terminated the scheme w.e.f. 14.08.1996. This termination of agreement is misinterpreted by the Second Party workers as termination of their services Hence, in this background, First Party prayed for rejection of reference with costs.

8. In this background of facts, following issues were framed at Exh. O-3 to which I record my findings as under.

ISSUES	FINDINGS
1. Whether the Second Party proves that they were workmen of First Party?	In the affirmative.
2. Whether the Second Party proves that they were illegally terminated from the services by First Party?	In the affirmative.
3. Whether the Second Party is entitled for reliefs claimed in the statement of claim?	Party in affirmative.
3a. Whether the First Party proves that there is inordinate delay in raising the dispute?	In the negative.
4. What Award?	As per final order.

### REASONS

9. The Second Party has examined Shri. Ravindra Raghunath Ashtekar at Exh. U-11. The First Party has examined its Assistant General Manager, Shri Anilkumar Vilas Kadre at Exh. C-24. The parties are relying on the documents which they have produced on record.

### ISSUE No. 1

10. The learned advocate for the First Party has submitted that Second Party workers have not pleaded nature of duties performed by them. He has submitted that the oral evidence which the Second Party workers have led is without pleadings and the same cannot be considered. He has submitted that the Second Party workers were not under the control of the First Party. He has submitted that the authority of Hon'ble Supreme Court in Indian Banks Association is not helpful to the Second Party workers as in para 4 of the said authority, the Hon'ble Supreme Court has not laid down the law that pigmy agent is a workman as per Industrial Disputes Act, 1947. He has submitted from the para 24 of the said authority it can be seen that evidence had come before the Tribunal that the deposit collectors are workmen within the meaning of Industrial Disputes Act, 1947. He has submitted that the Second Party workers were not workmen as the working hours of the Second Party workers were not fixed and they used to collect the pigmy deposits from the customers as per their wish. He has submitted that they used to decide as to from which pigmy account holder they would first collect the Pigmy amount. He has submitted that the Second Party workers used to collect pigmy deposit from the pigmy account holders after banking hours. He has submitted that Bank used to give commission to the Second Party workers on the basis of pigmy deposits which they have collected during the concerned period. He has submitted that the commission amount which the Second Party workers used to receive

in every month used to differ month to month because of variance in collection of pigmy deposits by the Second Party workers.

The learned advocate relied on unreported decision of Hon'ble Karnataka High Court in case of Syndicate Bank V/s. Vasanth Gururao Kusanur in Writ Petition No. 7057 of 2006. In the said authority, the Hon'ble Karnataka High Court has followed the authority of Hon'ble Supreme Court in Indian Bank's Association (Supra). Indirectly the First Party is admitting that the Second Party workers are workmen as per the provisions of Industrial Disputes Act, 1947.

In the authority of Indian Bank's Association (Supra) the Hon'ble Apex Court observed that, "We also accept the submission that the banks have no control over the deposit collectors. Undoubtedly the deposit collectors are free to regulate their own hours of work, but that is because of the nature of the work itself. It would be impossible to fix working hours for such deposit collectors because they have to go to various depositors. This would have to be done at the convenience of the depositors and at such times as required by the depositors. If this is so, then no time can be fixed for such work. However, there is control inasmuch as the deposit collectors have to bring the collections and deposit the same in the banks by the very next day. They have then to fill in various forms, accounts, registers and passbooks. They also have to do such other clerical work as the Bank may direct. They are, therefore, accountable to the Bank and under the control of the Bank.

We also see no force in the contention that Section 10 of the Banking Regulation Act prevents employment of persons on commission basis. The proviso to section 10 makes it clear that commission can be paid to persons who are not in regular employment undoubtedly, the deposit collectors are not regular employees of the Bank. But they, nevertheless, are workers within the meaning of the term as defined in the Industrial Disputes Act. There is clearly a relationship of master and servant between the deposit collectors and the Bank concerned."

Moreover, in reference strict rules of The Civil Procedure Code and Indian Evidence Act are not applicable. In the Statement of claim the Second Party workers have pleaded that they were appointed through branch managers as pigmy deposit collectors and they have worked under the kind control of the First Party as well as kind control of the branch manager. They have pleaded that their duty was to collect maximum deposits from the pigmy account holders. In the examination in chief at para 4 and 5, the second party workers have stated nature of duties performed by them.

11. Learned Advocate for the first party has submitted that the Second Party workers have entered into agreements and as per the terms and conditions laid down



in the agreements, the Second Party workers were only authorised to collect deposits under Madhu Sanchay Scheme. He has submitted that as per the agreement, there was relationship of principal and agent between the parties. He further submitted that the Second Party workers were appointed only to collect deposits under the Madhu Sanchay Scheme. They were not having any involvement in any other activities of the First Party. He has submitted that Madhu sanchay Scheme became unremunerative and uneconomical. He has submitted that the First Party decided to terminate scheme and accordingly the First Party terminated the scheme w.e.f. 14.08.1996. He has submitted that as a result of termination of the scheme, the said agreement did not survive and came to an end. He has submitted that the relationship of Principal and Agent between First Party and Second Party came to an end on 14.08.1996 as on the same day the Madhu Sanchay Scheme came to an end.

In the Cross examination, the Second Party workers at Exh. U-11 have admitted that when they started working as pigmy agents, at that time, the Bank has entered into an agreement/contract with them. They have further admitted that as per the agreement they had worked till 13.08.1996 as pigmy agents. They also admitted that they used to collect pigmy deposits under the Madhu Sanchay Scheme and the Bank had closed the scheme on 14.08.1996. They have further admitted that except working for Madhu Sanchay Scheme, they were not doing any work of United Western Bank.

In the cross examination, at Exh. C-24, Shri Anilkumar Kadre has admitted that like Madhu Sanchay Scheme at that time there were many other schemes functioning in the First Party. He was unable to state as to whether the Second Party workers have demanded the work of collection of deposits in other schemes from the First Party on 14.08.1996, and the same was not given. The admissions given by the Second Party workers are not helpful to the First Party as the First Party has failed to produce on record the original agreements or the copy of the agreements which were executed between the parties. It is not the case of the First Party that in the agreement there is clause that if the Madhu Sanchay Scheme automatically comes to an end, the agreement will also automatically come to an end. The First Party has not produced documentary evidence on record to show that the Madhu Sanchay Scheme had become unremunerative and uneconomical. It is not the case of the First Party that due to the said scheme, the First Party has sustained loss. It is not the case of the First Party that the customers of the said scheme had reduced. Only on the basis of admission given by Second Party workers one cannot come to the conclusion that contract/agreement was only for Madhu Sanchay Scheme. The important document *i.e.* contract/agreement is not brought before the Tribunal for the reason best known to the First Party. It is not the case

of the First Party that it has destroyed the contract/agreement executed between the First Party and the Second Party workers. The First Party has not given any notice or order to Second Party workers on 14.08.1996 that as per the agreement/contract, the relationship of principal and agent between the parties have come to an end. Considering the admissions given by the Assistant General Manager of the First Party as at that time many other schemes were functioning like Madhu Sanchay Scheme, one cannot say that there was no work available with the First Party after closure of the Madhu Sanchay Scheme. The First Party being a banking Industry, it cannot be said that there was no work available for pigmy agents to collect deposits from the customers.

From the above discussion and as per the ratio laid down by Hon'ble Supreme Court in Indian Bank's Association (Supra), I come to the conclusion that the Second Party workers are workers and there was relationship of employer and employee between the parties. Hence, I answer Issue No. 1 in the affirmative.

#### ISSUE NO. 3-A

12. The learned advocate for the First Party submitted that Second Party workers were not at all espousing the alleged cause of action which arose after alleged termination of the Second Party workers. He has submitted that the Second Party workers were waiting and watching for the decision of Hon'ble Supreme Court in Indian Bank's Association (Supra). He has submitted that the Second Party workers were/are not permitted to enjoy the fruits which came from the decision of Indian Bank's Association (Supra). He has submitted that the Second Party workers have not explained delay in raising their disputes in the statement of claims. He submitted that there is delay of five years and two onths in raising disputes and same is not explained. He submitted that the Second Party workers came to know about the decision of Indian Bank's Association (Supra). and thereafter Second Party workers raised the dispute before the First Party. He has submitted that when the Second Party workers for the first time had raised the dispute, at that time, dispute had become stale and same was not in existence.

In support of his submissions, he has relied upon the decision in case of Bhoop Singh V/s. Union of India reported in 1993 I L.K.J.260 (S.C.) The Hon'ble Supreme Court has observed that "It is expected of a Government Servant who has a legitimate claim to approach the Court for the relief within a reasonable period, assuming no fixed prayer of limitation applies."

The Hon'ble Supreme Court further observed that, "This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his

service after a period of twenty two years. without any cogent explanation for the inordinate delay, merely because other similarly dismissed had been reinstated as a result of their earlier petitions being allowed."

In that matter, the Delhi Armed Police participated in a mass agitation on April 14, 1967. The services of the agitating police constables were terminated on that account without specifying that reason for the termination. The dismissed constables who were not taken back in service filed Writ Petitions in Delhi High Court in 1969 and 1970 which were allowed by Delhi High Court. Subsequently, some other constables also filed Writ Petitions in Delhi High Court which two were allowed. Another set of similarly dismissed constables then filed Writ Petitions in the Delhi High Court challenging the termination of their services contending that their claim was identical with that of the Petitioners in the Writ Petitions filed in 1978. These Writ Petitions were transferred to Central Administrative Tribunal which held granted the same relief as was granted to the Petitioners in the Writ Petitions filed in the High Court in 1978. The Delhi Administration preferred appeals in Hon'ble Supreme Court against the decision. Those appeals were dismissed.

The petitioner Bhoop Singh was terminated on 03.08.1967 and he had filed O.A. No. 753 of 1989 in the Central Administrative Tribunal praying for reinstatement in service and all consequential benefits on the ground that his case is similar to that of the Police Constables who had succeeded in the earlier rounds of litigation. The Tribunal had rejected the Petitioner's application on the ground that it is highly belated and there is no cogent explanation for the inordinate delay of twenty two years in filing the application on March 13, 1989 after termination of the Petitioner's service in 1967.

In the matter before Hon'ble Supreme Court, the Petitioner had knowledge that colleagues were reinstated in the years 1969 and 1970. After knowing fully well the Petitioner had kept quiet for twenty two years. In that matter, the Petitioner knew in the year 1969 as to what was the remedy available to him. In the present matter the Second Party workers had no knowledge that they come under the definition of workman. After having knowledge about their right they had raised dispute.

The Second Party workers are not Government servants. The First Party is a Banking industry and Second Party workers are workmen. The Second Party workers have immediately raised dispute after 5 years and 2 months. The reason behind the delay to raise the dispute is that Second Party workers waited for the decision of Hon'ble Supreme Court. The delay of 5 years and 2 months cannot be called as inordinate delay. No Court has defined as to how to calculate and how to consider reasonable period for raising a

dispute. The reasonable period depends upon case to case.

Hence, with due respect to the Hon'ble Supreme Court, the said authority is not helpful to First Party.

13. The learned advocate for the First Party has relied upon the authority in case of S.S. Rathore V/s. State of Madhya Pradesh reported in 1990 I LAB.I.C. 398. In this matter the Hon'ble Supreme Court observed that, "We are also of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made though the remedy has been availed of a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle"

The Hon'ble Supreme Court further observed that, It is appropriate to notice the provision regarding limitation under S. 21 of the Administrative Tribunals Act. Sub-Section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government Servants are concerned. Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

In the matter before Hon'ble Supreme Court the plaintiff was a Government Servant of Madhya Pradesh and he was dismissed from services by the Collector on 13.01.1966. He preferred an appeal to the Divisional Commissioner and that appeal was dismissed on 31.08.1966. The order of dismissal of the appeal was communicated to the plaintiff on 19.09.1966. The plaintiff gave notice under Section 80 of the Code of Civil Procedure on 17.06.1969 and filed his suit on 30th September 1989, asking for a declaration that the order of dismissal was inoperative and he continued to be in service. The suit which was filed by the plaintiff was dismissed in the Courts below on acceptance of the defence plea that plaintiff had not filed suit within three years from the date when the cause of action first arose, as required under Art. 58 of the First Schedule of the Limitation Act, 1963.

With due respect to the Hon'ble Supreme Court, the said decision is not helpful to the first party as the

provisions of Limitation Act are not applicable to the Reference under the Industrial Disputes Act, 1947. Moreover the said ratio is laid down with respect to suits outside the purview of the Administrative Tribunals Act not with respect of Reference.

14. The learned advocate for the First Party has relied upon the unreported authority of Hon'ble Karnataka High Court in case of Syndicate Bank V/s. Vasanth Gururao Kusanur in Writ Petition No. 7057 of 2006. While deciding the Writ Petition the Hon'ble Karnataka High Court has followed the ratio laid down by Hon'ble Supreme Court in cases of

- (i) 2000 SCC (L & S) 283 — Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and others.
- (ii) (2006) 5 SCC 433 U.P. State Road Transport Corporation Vs. Babu Ram.
- (iii) 2007 AIR SCW 2882 — Dharappa Vs. Bijapur Cooperative Milk Producers Societies Union Ltd.

In the matter before the Hon'ble Karnataka High Court the Respondent was terminated on 26.08.1991 and he has raised the dispute on 12.12.2001. The case of the Bank was that by the time the Respondent had raised the dispute, it had become stale and did not exist between the parties.

**(I) 2000 SCC (L & S) 283 — Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and others.**

In the matter before Hon'ble Supreme Court the Respondent had admitted that he had committed misappropriation, expressed unconditional regret and prayed the punishment of dismissal be not imposed on him. The Respondent was dismissed from the services from 11 August, 1972. He filed appeal before the Board of Directors of Bank. His appeal was dismissed by order dated 3.01.1973. He got whatever benefits were due to him under the rules framed by the Bank. Then, after a period of seven years he served a notice on the Bank contending that he was discriminated as two other employees of the Bank under same situation were reinstated in the service of the Bank. The Respondent had started to raise the dispute before appropriate forum. The Respondent moved application before Assistant Commissioner of Labour of the Central Government for the relief. The Assistant Commissioner of Labour held that there was no scope for formal proceeding. The Respondent filed Writ Petition. The Hon'ble High Court directed the Assistant Commissioner of Labour to submit its report u/s. 4(2) of the Act. The same was sent to the Hon'ble High Court. The Central Government declined to make reference u/s. 10 of the Act. The Respondent again filed Writ Petition in Hon'ble High Court, which was disposed of with a direction to the Central Government to re-examine the matter against which the Bank came before the Hon'ble Supreme Court.

**(II) (2006) 5 SCC 433 U.P. State Road Transport Corporation Vs. Babu Ram.**

The Respondent and others were terminated from the service in the year 1983. The Dy. Labour Commissioner referred the dispute by its order dated 29.8.1998. The Respondent had raised the claim after 15 years. The Hon'ble Supreme Court had followed the ratio laid down in Nedungadi Bank Ltd. (Supra).

**(III) 2007 AIR SCW 2882 — Dharappa Vs. Bijapur Cooperative Milk Producers Societies Union Ltd.**

Section 10(4A) provides an alternative procedure to seek redressal in regard to an order of termination, by making an application directly to the Labour Court, within six months from the date of communication of the order of termination, without the intervention or assistance of an employees union and without having to approach the appropriate Government for making a reference. Such a provision cannot be interpreted as reviving stale and dead claims nor as enabling a workman to seek remedy beyond six months from the date of communication, except to the extent expressly provided for. The true and proper interpretation of Section 10(4A) is that an individual workman can apply to the Labour Court for adjudication of the dispute relating to an order of discharge/dismissal/retrenchment/termination within six months from the date of communication to him, of such order of termination.

In that matter the appellant was terminated with effect from 01.03.1980. He made an application under Section 10(4A) of Industrial Disputes Act, 1947 on 04.10.1988 before Labour Court, Hubli for declaration that his termination be declared as null and void. In Industrial Disputes Act there is Karnataka Amendment to Section 10 by way of insertion of sub-section (4A) with effect from 07.04.1988. The said sub-section states that workman should directly approach the Labour Court within six months from the date of communication of the order.

With due respect to the Hon'ble Supreme Court and Hon'ble Karnataka High Court the said authorities are not helpful to First Party. The First Party has not challenged the order of reference passed on 27.08.2002. The First Party is now stopped from raising the contention that Second Party workers were not diligent in taking action when the alleged cause of action for the dispute arose when the Second Party workers were allegedly terminated on 29.8.1996. The First Party has not specifically pleaded in its written statement that the dispute had become stale and the same did not exist when the Second Party workers have sent approach notice on 08.10.2001 to the First Party. The First Party has not produced on record a copy of reply to show that it had given reply to the approach notice of the Second Party workers. Nor it is the case of the First Party that it had given reply to the approach notices of the Second Party workers. The Second Party



workers have not received any compensation amount from the First Party. The First Party has not stated and made clear in its written statement as to whether it had given reply to the statement of justification before Conciliation Authority. There is no material on record to come to the conclusion that the First Party has stated before the Conciliation Authority that the Second Party workers were not diligent in espousing the alleged cause of action and the dispute had become stale and same is not existence. The Second Party workers have produced on record the approach notice dated 08.11.2001, which shows that they have raised dispute within a reasonable time, after the decision of Hon'ble Supreme Court in Indian Bank's Association (Supra). The provisions of Limitation Act are not applicable to the present references which are referred to this Tribunal under the provisions of the Industrial Disputes Act, 1947. Delay in raising dispute and dispute becoming stale or coming to an end are two different issues to each other. Delay in raising dispute means that dispute was in existence when it was raised. The defence raised by First Party is devoid of merit as the First Party has not proved as to what prejudice was caused to it due to delay in raising dispute. The plea of delay which is raised by First Party is required to be proved by showing real prejudice caused to it and not by real hypothetical. The Second Party workers were terminated all of a sudden on one fine day morning without giving any intimation to them. The Second Party workers are the pigmy agents. Their income was not fixed. In these circumstances whether it was expected from them to raise their dispute immediately against the First Party or first they should make arrangement for their family's survival.

15. In the decision of Hon'ble Supreme Court in case of Ajaib Singh V/s. Sirhind Co.-Op. Marketing Cum Processing Service Society Ltd. and Anr. reported in 1999 I CLR 1068, it is observed that the, Industrial Disputes Act, 1947—S.10—Limitation Act, 1983—Art. 137—Applicability to Industrial Disputes Act, 1947—Appellant was dismissed from service on 16.07.1974—He raised demand on 08.12.1981—In consequent reference to Labour Court, Respondent approached High Court mainly on the ground of delay in clamining reference. Respondent having succeeded in High Court on the ground that the appellant had slept over for years in raising demand, this appeal is filed—Supreme Court after taking into consideration the objectives in enacting Industrial Disputes Act, 1947, the case law and the fact that Limitation Act is not made applicable to the Industrial Disputes Act, 1947, held that relief under the Act cannot be denied to the workman merely on the ground of delay as Limitation Act is not applicable and in case delay is established, the Labour Court or Tribunal can mould relief as to back wages etc.

16. In the authority of Hon'ble Supreme Court in case of Kuldeep Singh V.G.M. Instrument Design

Development and facilities Center and Anr. reported in 2011 I CLR 5, observed that though the law does not prescribe any time limit for appropriate Government to exercise its power u/s. 10 of Industrial Disputes Act, 1947, the said power is to be exercised reasonably and in a rationale manner.

From the above discussion, I come to the conclusion that first Party has not proved that there is inordinate delay on the part of Second Party workers to raise dispute before the first party. The delay of 5 years and 2 months caused by Second Party workers to raise the dispute is not an unreasonable delay. Moreover, in view of the ratio laid down by Hon'ble Supreme Court in Ajaib Singh V/s. Sirhind Co.-Op. Marketing-Cum-Processing Service Society Ltd. and Anr. reported in 1999 I CLR 1068 and Kuldeep Singh V. G.M. Instrument Design Development and facilities Center and Anr. reported in 2011 I CLR 5, the Tribunal cannot reject the relief in favour of Second Party workers, if they prove illegal termination. Hence, I answer Issue No. 3-A in the Negative.

## ISSUE No. 2

17. Undisputedly, the Second Party workers started to work as pigmy agents in Mahadwara Road Branch of First Party from 12.12.1991 onwards till 14.08.1996. In the evidence at Exh. U-11, the Second Party workers have deposed that they have worked and rendered more than 240 days service in every year. The witness of First Party Shri Anil Kumar Kadare in his cross examination at Exh. C-24 has admitted that the record of collection of deposits and record to be maintained by Second Party workers of deposits is available in Mahadwar Branch of United Western Bank. He further admitted that the Second Party workers used to work on an average 26 days in a month and record of their working is in Mahadwar Branch. He has also admitted that from 1996 onwards the Second Party workers were working with the First Party and on 14.08.1996 the Bank had stopped to give work of Madhu Sanchay Scheme to Second Party workers. In these circumstances, there was no difficulty for the Bank to produce on record the documents in respect of Second Party workers about collection of deposits and the payment/commission which was made by the First Party to the Second Party workers towards their collection and the number of days they have worked. In the cross-examination, the witness of First Party have avoided to give answers as to whether the Bank had given any written notice to the Second Party workers while stopping work of Second Party workers. He has avoided to give answer whether the First Party Bank had given compensation amount, notice pay in lieu of notice after 14.08.1996. He has admitted that from 14.08.1996 except Madhu Sanchay Scheme other schemes were in existence in the Bank. In the cross-examination Second Party had given suggestion to the said witness that the workers had demanded work of collection of deposit in other scheme the same was not given.



The statement of justification which is given by the Second Party workers to the Assistant Commissioner of Labour on 28.10.2001 at Exh. U. 18, which also states that they have worked for more than 240 days in every year. The Second Party workers were collecting pigmy amount from the pigmy account holders till 13.08.1996. From this fact inference can be drawn that the Second Party workers have continuously worked for more than 240 days during a period of preceding 12 months from 13.08.1996. I do not see any reason to disbelieve the evidence of the Second Party workers on the fact that they had continuously worked for more than 240 days during a period of preceding 12 calendar months from 13.08.1996.

From the above evidence, it is clear that First Party Bank had not followed the procedure prescribed under 25-F, G and H of the Industrial Disputes Act, 1947 nor it followed due process of law while not allowing the Second Party workers to work, which amounts to illegal termination. Hence, I answer Issue No. 2 in the affirmative.

### ISSUE NO. 3

18. For the sake of arguments let us consider that the First Party had retrenched the Second Party workers as the Madhu sanchay scheme was closed and no work of collection of deposits was available with the First Party. In that case, it was necessary for the First Party to follow the provisions of section 25-F, G and H of the Industrial Disputes Act, 1947 at the time of retrenchment of Second Party workers. On the contrary, the First Party neither in its written statement alleged that it has retrenched the Second Party workers nor in its evidence it has anywhere stated that the Second Party workers were retrenched by it by following procedure laid down in sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. It is not the case of the First Party that it has issued retrenchment notice, or displayed seniority list etc. while putting an end to the services of the First Party.

19. The Second Party workers have stated that they had worked for more than 240 days continuously in every year. They have stated that in every year they had rendered more than 240 days continuous service. Undisputedly, the First Party did not allow the Second Party workers to work from 14.8.1996 onwards. Therefore, it was obligatory on the part of the First Party to follow due process of law while putting an end to the service of the Second Party workers.

From the above discussion it has become abundantly clear that the First Party had orally terminated the Second Party workers on 14.8.1996 without following due process of law. The Second Party workers had given the approach notice to First Party on 08.10.2001 and had given statement of justification to

the Assistant Commissioner of Labour of Central Government on 23.10.2001. The Assistant Commissioner of Labour had referred the reference to this Tribunal by passing the order dated 27.8.2002. The Second Party workers have not brought on record the amount of commission which they used to receive from the First Party. They have not brought on record any evidence on the point as to whether they remained unemployed after 14.08.1996. Both the parties have taken the references very lightly. The age of the second Party workers is above 58 years. It will not be proper to give relief of reinstatement to the Second Party workers after a period of 17 years. In these circumstances, it is necessary to mould the relief of reinstatement and back wages by way of giving compensation. Hence, I answer Issue No. 3 accordingly and proceed to answer the reference partly in affirmative.

### AWARD

- (I) Reference is answered partly in affirmative.
- (II) Each of the Second Party worker in Reference (IT) Nos. 3 to 6 of 2002 is entitled to an amount of compensation of Rs. 50,000/- each in lieu of reinstatement and back wages.
- (III) Award be drawn accordingly.
- (IV) Copy of Award be kept in Reference (IT) Nos. 4 to 6 of 2002.

Place: Kolhapur, K.R. PETHKAR, Presiding Officer

Date: 24.04.2013

नई दिल्ली, 29 नवम्बर, 2013

**का.आ. 2650.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनाइटेड वेस्टर्न बैंक लिमिटेड प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोल्हापुर के पंचाट संदर्भ संख्या 4/2002, को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[सं. एल-12012/178/2002-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2650.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 4/2002 of the Industrial Tribunal, Kolhapur as shown in the Annexure, in the industrial dispute between the management of the United Western Bank Ltd. and their workmen, received by the Central Government on 29/11/2013.

[No. L-12012/178/2002-IR(B-I)]

SUMATI SAKLANI, Section Officer

## ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL  
TRIBUNAL, KOLHAPUR

## Reference (IT) No. 3 to 6 of 2002.

## Reference (IT) No. 3 of 2002.

The United Western Bank Ltd.,  
Raviwar Peth, Satara.  
Thru. Its General Manager.  
Industrial Development Bank of India,  
WTC Complex, Cuff Parade, Mumbai. ...First Party

AND

Shri Ravindra Ragunath Ashtekar,  
2804, A Ward, Sarnaik Wada,  
Kolhapur. ...Second Party

## Reference (IT) No. 4 of 2002.

The United Western Bank Ltd.,  
Raviwar Peth, Satara.  
Thru. Its General Manager.  
Industrial Development Bank of India,  
WTC Complex, Cuff Parade, Mumbai. ...First Party

AND

Shri Mahesh Prabhakar Bavadekar,  
2931, A Ward, Mahadwar road,  
Kolhapur. ....Second Party

## Reference (IT) No. 5 of 2002.

The United Western Bank Ltd.,  
Raviwar Peth, Satara.  
Thru. Its General Manager.  
Industrial Development Bank of India,  
WTC Complex, Cuff Parade, Mumbai. ...First Party

AND

Shri Mukund Ganesh Kulkarni,  
2663, A Ward, Diwan Bol,  
Kolhapur. ....Second Party

## Reference (IT) No. 6 of 2002

The United Western Bank Ltd.,  
Raviwar Peth, Satara.  
Thru. Its General Manager.  
Industrial Development Bank of India,  
WTC Complex, Cuff Parade, Mumbai. ...First Party

AND

Shri Prakash Baburao Pawar,  
23/1, Lay out No. 3, Baba Jarag Nagar,  
Kolhapur. ....Second Party

CORAM: SHRI K.R. PETHKAR, PRESIDING OFFICER

Appearances : Shri S.R. Rane, Advocate for the First  
Party.  
Shri D.N. Patil, Advocate for the  
Second Party workers.

## COMMON JUDGEMENT

(24.02.2013)

1. Central Government by orders dated 27.08.2002 in exercise of power conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of Industrial Disputes Act, 1947 referred these disputes between the above named parties for adjudication to this Tribunal in respect of the action of the management of First Party in terminating/discontinuing the services of concerned Second Party Workers.

The facts in brief are that,

2. The Second Party workers were serving with the First Party since the dates mentioned as Pigmy Deposit Collectors with clean and meritorious service record. It is alleged by the Second Party workers that their services were terminated by the First Party without following procedure laid down under the Industrial Disputes Act, 1947 *w.e.f.* 14.08.1996. Therefore, the Second Party workers raised dispute before Assistant Commissioner of Labour (Central) Pune, and after recording its failure, the Central Government referred these four reference for adjudication.

3. The First Party workers alleged that being appointed as Pigmy Deposit Collectors, there was employee-employer relationship between the First Party and the concerned Second Party workers. It is alleged by the Second Party workers that the branch manager of First Party illegally an improperly terminated the services of the Second Party workers *w.e.f.* 14.08.1996. The Second Party workers alleged that they approached the concerned branch managers time to time for reinstatement. They also alleged that they were continuously ventilating their grievances. As their requests were not considered by the First Party, they sent demand notices u/s. 2-A of Industrial Disputes Act, 1947 on 08.10.2001. The Second Party workers submitted its statement of justification on 23.10.2001 along with request letter for intervention to Conciliation Authority under the Industrial Disputes Act, 1947.

4. The Second Party alleged that they had worked for more than 240 days continuously in every year. However, to deprive them from legal status and benefits, First Party continued them on the bond as Pigmy Deposit Collectors. The Second Party alleged that the work performed by them is of perennial in nature. The Second Party workers alleged that the First Party has not paid wages on par with other employees nor given benefits.

5. It is alleged that while terminating the services of the Second Party workers the First Party has not followed proper procedure under the Industrial Disputes Act, 1947. As Pigmy Deposit Collectors they used to collect the deposits from the customers and fill in various registers. Lastly the Second Party workers alleged to allow the reference holding the termination effected is illegal,

improper and bad in law. Therefore, the Second Party prayed to declare the termination effected by First Party w.e.f. 14.08.1996 as illegal and improper and bad in law with a direction to reinstate the Second Party workers with full back wages.

6. The First Party by its written statement *vide* Exh. C-7 denied all the material allegations made against it by the Second Party workers. It is contended by the First Party that reference is misconceived, baseless and untenable. The First Party alleged that the Second Party workers are not workmen within the meaning of Section 2(s) of Industrial Disputes Act, 1947. The First Party disputed the relationship of employer and employee between the parties.

7. The First Party submitted that the reference is at belated stage and the approach of the Second Party workers is casual and careless. The First Party alleged that there is delay of 5 years and 2 months in raising dispute. The First Party alleged that it is engaged in the business of banking and Second Party workers were collecting deposits on commission basis. The First Party was not having control over the working hours of Second Party workers. The Madhu Sanchay Deposit scheme became unremunerative and uneconomical. Therefore the First Party terminated the scheme w.e.f. 14.08.1996. This termination of agreement is misinterpreted by the Second Party workers as termination of their services. Hence, in this background, First Party prayed for rejection of reference with costs.

8. In his background of facts, following issues were framed at Exh. O-3 to which I record my findings as under.

ISSUES	FINDINGS
1. Whether the Second Party proves that they were workmen of First Party?	In the affirmative.
2. Whether the Second Party proves that they were illegally terminated from the services by First Party?	In the affirmative.
3. Whether the Second Party is entitled for reliefs claimed in the statement of claim?	Partly in affirmative.
3(a) Whether the First Party proves that there is inordinate delay in raising the dispute?	In the negative.
4. What Award?	As per final order.

#### REASONS

9. The Second Party has examined Shri Ravindra Raghunath Ashtekar at Exh.U-11. The first party has

examined its Assistant General Manager, Shri. Anilkumar Vilas Kadre at Exh.C-24. The parties are relying on the documents which they have produced on record.

#### ISSUE NO. 1

10. The learned advocate for the first party has submitted that Second Party workers have not pleaded nature of duties performed by them. He has submitted that the oral evidence which the Second Party workers have led is without pleadings and the same cannot be considered. He has submitted that the Second Party workers were not under the control of the first party. He has submitted that the authority of Hon'ble Supreme Court in Indian Banks Association is not helpful to the Second Party workers as in para 4 of the said authority, the Hon'ble Supreme Court has not laid down the law that pigmy agent is a workman as per Industrial Disputes Act, 1947. He has submitted from the para 24 of the said authority it can be seen that evidence had come before the Tribunal that the deposit collectors are workmen within the meaning of Industrial Disputes Act, 1947. He has submitted that the Second Party workers were not workmen as the working hours of the Second Party workers were not fixed and they used to collect the pigmy deposits from the customers as per their wish. He has submitted that they used to decide as to from which pigmy account holder they would first collect the Pigmy amount. He has submitted that the Second Party workers used to collect pigmy deposit from the pigmy account holders after banking hours. He has submitted that Bank used to give commission to the Second Party workers on the basis of pigmy deposits which they have collected during the concerned period. He has submitted that the commission amount which the Second Party workers used to receive in every month used to differ month to month because of variance in collection of pigmy deposits by the Second Party workers.

The learned advocate relied on unreported decision of Hon'ble Karnataka High Court in case of Syndicate Bank V/s. Vasanth Gururao Kusanur in Writ Petition No. 7057 of 2006. In the said authority, the Hon'ble Karnataka High Court has followed the authority of Hon'ble Supreme Court in Indian Bank's Association (Supra). Indirectly the First Party is admitting that the Second Party workers are workmen as per the provisions of Industrial Disputes Act, 1947.

In the authority of Indian Bank's Association (Supra) the Hon'ble Apex Court observed that, "We also accept the submission that the banks have no control over the deposit collectors. Undoubtedly the deposit collectors are free to regulate their own hours of work, but that is because of the nature of the work itself. It would be impossible to fix working hours for such deposit collectors because they have to go to various depositors. This would have to be done at the convenience of the

depositors and at such times as required by the depositors. If this is so, then no time can be fixed for such work. However, there is control in as much as the deposit collectors have to bring the collections and deposit the same in the banks by the very next day. They have then to fill in various forms, accounts, registers and passbooks. They also have to do such other clerical work as the Bank may direct. They are, therefore, accountable to the Bank and under the control of the Bank.

We also see no force in the contention that Section 10 of the Banking Regulation Act prevents employment of persons on commission basis. The proviso to section 10 makes it clear that commission can be paid to persons who are not in regular employment undoubtedly, the deposit collectors are not regular employees of the Bank. But they, nevertheless, are workers within the meaning of the term as defined in the Industrial Disputes Act. There is clearly a relationship of master and servant between the deposit collectors and the Bank concerned."

Moreover, in reference strict rules of The Civil Procedure Code and Indian Evidence Act are not applicable. In the Statement of claim the Second Party workers have pleaded that they were appointed through branch managers as pigmy deposit collectors and they have worked under the kind control of the First Party as well as kind control of the branch manager. They have pleaded that their duty was to collect maximum deposits from the pigmy account holders. In the examination in chief at para 4 and 5, the second party workers have stated nature of duties performed by them.

11. Learned Advocate for the first party has submitted that the Second Party workers have entered into agreements and as per the terms and conditions laid down in the agreements, the Second Party workers were only authorised to collect deposits under Madhu Sanchay Scheme. He has submitted that as per the agreement, there was relationship of principal and agent between the parties. He further submitted that the Second Party workers were appointed only to collect deposits under the Madhu Sanchay Scheme. They were not having any involvement in any other activities of the First Party. He has submitted that Madhu Sanchay Scheme became unremunerative and uneconomical. He has submitted that the First Party decided to terminate scheme and accordingly the First Party terminated the scheme *w.e.f.* 14.08.1996. He has submitted that as a result of termination of the scheme, the said agreement did not survive and came to an end. He has submitted that the relationship of Principal and Agent between First Party and Second Party came to an end on 14.08.1996 as on the same day the Madhu Sanchay Scheme came to an end.

In the Cross examination, the Second Party workers at Exh.U-11 have admitted that when they started working as pigmy agents, at that time, the Bank has entered into

an agreement/contract with them. They have further admitted that as per the agreement they had worked till 13.08.1996 as pigmy deposits under the Madhu Sanchay Scheme and the Bank had closed the scheme on 14.08.1996. They have further admitted that except working for Madhu Sanchay Scheme, they were not doing any work of United Western Bank.

In the cross examination, at Exh. C-24, Shri Anilkumar Kadre has admitted that like Madhu Sanchay Scheme at that time there were many other schemes functioning in the First Party. He was unable to state as to whether the Second Party workers have demanded the work of collection of deposits in other schemes from the First Party on 14.08.1996, and the same was not given. The admissions given by the Second Party workers are not helpful to the First Party as the First Party has failed to produce on record the original agreements or the copy of the agreements which were executed between the parties. It is not the case of the First Party that in the agreement there is clause that if the Madhu Sanchay Scheme automatically comes to an end, the agreement will also automatically come to an end. The First Party has not produced documentary evidence on record to show that the Madhu Sanchay Scheme had become unremunerative and uneconomical. It is not the case of the First Party that due to the said scheme, the First Party has sustained loss. It is not the case of the First Party that the customers of the said scheme had reduced. Only on the basis of admission given by Second Party workers are cannot come to the conclusion that contract/agreement was only for Madhu Sanchay Scheme. The important document *i.e.* contract/agreement is not brought before the Tribunal for the reason best known to the First Party. It is not the case of the First Party that it has destroyed the contract/agreement executed between the First Party and the Second Party workers. The First Party has not given any notice or order to Second Party workers on 14.08.1996 that as per the agreement/contract, the relationship of principal and agent between the parties have come to an end. Considering the admissions given by the Assistant General Manager of the First Party as at that time many other schemes were functioning like Madhu Sanchay Scheme, one cannot say that there was no work available with the First Party after closure of the Madhu Sanchay Scheme. The First Party being a banking Industry, it cannot be said that there was no work available for pigmy agents to collect deposits from the customers.

From the above discussion and as per the ratio laid down by Hon'ble Supreme Court in Indian Bank's Association (Supra), I come to the conclusion that the Second Party workers are workers and there was relationship of employer and employee between the parties. Hence, I answer Issue No. 1 in the affirmative.



**ISSUE NO. 3-A**

12. The learned advocate for the First Party submitted that Second Party workers were not at all espousing the alleged cause of action which arose after alleged termination of the Second Party workers. He has submitted that the Second Party workers were waiting and watching for the decision of Hon'ble Supreme Court in Indian Bank's Association (Supra). He has submitted that the Second Party workers were/are not permitted to enjoy the fruits which came from the decision of Indian Bank's Association (Supra). He has submitted that the Second Party workers have not explained delay in raising their disputes in the statement of claims. He submitted that there is delay of five years and two months in raising disputes and same is not explained. He submitted that the Second Party workers came to know about the decision of Indian Bank's Association (Supra) and thereafter Second Party workers raised the dispute before the First Party. He has submitted that when the Second Party workers for the first time had raised the dispute, at that time, dispute had become stale and same was not in existence.

In support of his submissions, he has relied upon the decision in case of Bhoop Singh V/s. Union of India reported in 1993 I.L.L.J. 260 (S.C.). The Hon'ble Supreme Court has observed that "It is expected of a Government servant who has a legitimate claim to approach the Court for the relief within a reasonable period, assuming no fixed prayer of limitation applies".

The Hon'ble Supreme Court further observed that, "This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty two years, without any cogent explanation for the inordinate delay, merely because other similarly dismissed had been reinstated as a result of their earlier petitions being allowed."

In that matter, the Delhi Armed Police participated in a mass agitation on April 14, 1967. The services of the agitating police constables were terminated on that account without specifying that reason for the termination. The dismissed constables who were not taken back in service filed Writ Petitions in Delhi High Court in 1969 and 1970 which were allowed by Delhi High Court. Subsequently, some other constables also filed Writ Petitions in Delhi High Court which too were allowed. Another set of similarly dismissed constables then filed Writ Petitions in the Delhi High Court challenging the termination of their services contending that their claim was identical with that of the Petitioners in the Writ Petitions filed in 1978. These Writ Petitions were transferred to Central Administrative Tribunal which held granted the same relief as was granted to the Petitioners in the Writ Petitions filed in the High Court in 1978. The Delhi Administration preferred appeals in

Hon'ble Supreme Court against the decision. Those appeals were dismissed.

The petitioner Bhoop Singh was terminated on 03.08.1967 and he had filed O.A. No. 753 of 1989 in the Central Administrative Tribunal praying for reinstatement in service and all consequential benefits on the ground that his case is similar to that of the Police Constables who had succeeded in the earlier rounds of litigation. The tribunal had rejected the Petitioner's application on the ground that it is highly belated and there is no cogent explanation for the inordinate delay of twenty two years in filing the application on March 13, 1989 after termination of the Petitioner's service in 1967.

In the matter before Hon'ble Supreme Court, the Petitioner had knowledge that colleagues were reinstated in the years 1969 and 1970. After knowing fully well the Petitioner had kept quiet for twenty two years. In that matter, the Petitioner knew in the year 1969 as to what was the remedy available to him. In the present matter the Second Party workers had no knowledge that they come under the definition of workman. After having knowledge about right they had raised dispute.

The Second Party workers are not Government servants. The First Party is a Banking industry and Second Party workers are workmen. The Second Party workers have immediately raised dispute after 5 years and 2 months. The reason behind the delay to raise the dispute is that Second Party workers waited for the decision of Hon'ble Supreme Court. The delay of 5 years and 2 months cannot be called as inordinate delay. No Court has defined as to how to calculate and how to consider reasonable period for raising a dispute. The reasonable period depends upon case to case.

Hence, with due respect to the Hon'ble Supreme Court, the said authority is not helpful to First Party.

13. The learned advocate for the First Party had relied upon the authority in case of S.S. Rathore V/s. State of Madhya Pradesh reported in 1990 I.L.A.B.I.C. 398. In this matter the Hon'ble Supreme Court observed that, "We are also of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made though the remedy has been availed of a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle".

The Hon'ble Supreme Court further observed that. It is appropriate to notice the provision regarding limitation under S.21 of the Administrative Tribunals Act. Sub-Section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government Servants are concerned. Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the administrative Tribunals Act shall continue to be governed by Article 58.

In the matter before Hon'ble Supreme Court the plaintiff was a Government Servant of Madhya Pradesh and he was dismissed from services by the Collector on 13.01.1966. He preferred an appeal to the Divisional Commissioner and that appeal was dismissed on 31.08.1966. The order of dismissal of the appeal was communicated to the plaintiff on 19.09.1966. The plaintiff gave notice under Section 80 of the Code of Civil Procedure on 17.06.1969 and filed this suit on 30th September, 1989, asking for a declaration that the order of dismissal was inoperative and he continued to be in service. The suit which was filed by the plaintiff was dismissed in the Courts below on acceptance of the defence plea that plaintiff had not filed suit within three years from the date when the cause of action first arose, as required under Art. 58 of the First Schedule of the Limitation Act, 1963.

With due respect to the Hon'ble Supreme Court, the said decision is not helpful to the first party as the provisions of Limitation Act are not applicable to the Reference under the Industrial Disputes Act, 1947. Moreover the said ratio is laid down with respect to suits outside the purview of the Administrative Tribunals Act not with respect to Reference.

14. The learned advocate for the First Party had relied upon the unreported authority of Hon'ble Karnataka High Court in case of Syndicate Bank V/s. Vasanth Gururao Kusanur in Writ petition No. 7057 of 2006. While deciding the Writ Petition the Hon'ble Karnataka High Court had followed the ratio laid down by Hon'ble Supreme Court in cases of

- (i) 2000 SCC (L & S) 293-Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and others.
- (ii) (2006) 5 SCC 433 U.P. State Road Transport Corporation Vs. Babu Ram.
- (iii) 2007 AIR SCW 2882-Dharappa Vs. Bijapur Cooperative Milk Producers Societies Union Ltd.

In the matter before the Hon'ble Karnataka High Court the Respondent was terminated on 26.08.1991 and he has raised the dispute on 12.12.2001. The case of the

Bank was that by the time the Respondent had raised the dispute, it had become stale and did not exist between the parties.

**(I) 2000 SCC (L & S) 283-Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and others.**

In the matter before Hon'ble Supreme Court the Respondent had admitted that he had committed misappropriation, expressed unconditional regret and prayed the punishment of dismissal be not imposed on him. The Respondent was dismissed from the services from 11 August 1972. He filed appeal before the Board of Directors of Bank. His appeal was dismissed by order dated 3.01.1973. He got whatever benefits were due to him under the rules framed by the Bank. Then, after a period of seven years he served a notice on the Bank contending that he was discriminated as two other employees of the Bank under same situation were reinstated in the service of the Bank. The Respondent had started to raise the dispute before appropriate forum. The Respondent moved application before Assistant Commissioner of Labour of the Central Government for the relief. The Assistant Commissioner of Labour held that there was no scope for formal proceeding. The Respondent filed Writ Petition. The Hon'ble High Court directed the Assistant Commissioner of Labour to submit its report u/s. 4(2) of the Act. The same was sent to the Hon'ble High Court. The Central Government declined to make reference u/s. 10 of the Act. The Respondent again filed Writ Petition in Hon'ble High Court, which was disposed of with a direction to the Central Government to re-examine the matter against which the Bank came before the Hon'ble Supreme Court.

**(II) (2006) 5 SCC 433 U.P. State Road Transport Corporation Vs. Babu Ram.**

The Respondent and others were terminated from the service in the year 1983. The Dy. Labour Commissioner referred the dispute by its order dated 29.8.1998. The Respondent had raised the claim after 15 years. The Hon'ble Supreme Court had followed the ratio laid down in Nedungadi Bank Ltd. (Supra).

**(III) 2007 AIR SCW 2882-Dharappa Vs. Bijapur Cooperative Milk Producers Societies Union Ltd.**

Section 10(4A) provides an alternative procedure to seek redressal in regard to an order of termination, by making an application directly to the Labour Court, within six months from the date of communication of the order of termination, without the intervention or assistance of an employees union and without having to approach the appropriate Government for making a reference. Such a provision cannot be interpreted as reviving stale and dead claims nor as enabling a workman to seek remedy beyond six months from the date of communication, except

to the extent expressly provided for. The true and proper interpretation of Section 10 (4A) is that an individual workman can apply to the Labour Court for adjudication of the dispute relating to an order of discharge/dismissal/retrenchment/termination within six months from the date of communication to him, of such order of termination.

In that matter the appellant was terminated with effect from 01.03.1980. He made an application under Section 10(4A) of Industrial Disputes Act, 1947 on 04.10.1988 before Labour Court, Hubli for declaration that his termination be declared as null and void. In Industrial Disputes Act there is Karnataka Amendment to Section 10 by way of insertion of Sub-Section (4A) with effect from 07.04.1988. The said sub-Section States that workman should directly approach the Labour Court within six months from the date of communication of the order.

With due respect to the Hon'ble Supreme Court and Hon'ble Karnataka High Court the said authorities are not helpful to First Party. The First Party has not challenged the order of reference passed on 27.08.2002. The First Party is now estopped from raising the contention that Second Party workers were not diligent in taking action when the alleged cause of action for the dispute arose when the Second Party workers were allegedly terminated on 29.8.1996. The First Party has not specifically pleaded in its written statement that the dispute had become stale and the same did not exist when the Second Party workers have sent approach notice on 08.10.2001 to the First Party. The First Party has not produced on record a copy of reply to show that it had given reply to the approach notice of the Second Party workers. Nor it is the case of the First Party that it had given reply to the approach notices of the Second Party workers. The Second Party workers have not received any compensation amount from the First Party. The First Party has not stated and made clear in its written statement as to whether it had given reply to the statement of justification before Conciliation Authority. There is no material on record to come to the conclusion that the First Party has stated before the Conciliation Authority that the Second party workers were not diligent in espousing the alleged cause of action and the dispute had become stale and same is not existence. The Second Party workers have produced on record the approach notice dated 08.11.2001, which shows that they have raised dispute within a reasonable time, after the decision of Hon'ble Supreme Court in Indian Bank's Association (Supra). The provisions of Limitation Act are not applicable to the present reference which are referred to this Tribunal under the provisions of the Industrial Disputes Act, 1947. Delay in raising dispute and dispute becoming stale or coming to an end are two different issues to each other. Delay in raising dispute means that dispute was in existence when it was raised. The defence raised by First Party is devoid of merit as the First Party has not proved as to what prejudice was

caused to it due to delay in raising dispute. The plea of delay which is raised by First Party is required to be proved by showing real prejudice caused to it and not by real hypothetical. The Second Party workers were terminated all of a sudden on one fine day morning without giving any intimation to them. The Second Party workers are the pigmy agents. Their income was not fixed. In these circumstances whether it was expected from them to raise their dispute immediately against the First party or first they should make arrangement for their family's survival.

15 In the decision of Hon'ble Supreme Court in case of Ajaib Singh V/s. Sirhind Co.-Op. Marketing Cum Processing Service Society Ltd. and Anr. reported in 1999 I CLR 1068, it is observed that the, Industrial Disputes Act, 1947-S.10- Limitation Act, 1983-Art. 137-Applicability to Industrial Disputes Act, 1947-Appellant was dismissed from service on 16.07.1974-He raised demand on 08.12.1981-In consequent reference to Labour Court, Respondent approached High Court mainly on the ground of delay in claiming reference.-Respondent having succeeded in High Court on the ground that the appellant had slept over for years in raising demand, this appeal is filed-Supreme Court after taking into consideration the objectives in enacting Industrial Disputes Act, 1947, the case law and the fact that Limitation Act is not made applicable to the Industrial Disputes Act, 1947, held that relief under the Act cannot be denied to the workman merely on the ground of delay as Limitation Act is not applicable and in case delay is established, the Labour Court or Tribunal can mould relief as to back wages etc.

16. In the authority of Hon'ble Supreme Court in case of Kuldeep Singh V.G. Instrument Design Development and facilities Center and Anr. reported in 2011 I CLR 5, observed that though the law does not prescribe any time limit for appropriate Government to exercise its power u/s. 10 of Industrial Disputes Act, 1947, the said power is to be exercised reasonably and in a rationale manner.

From the above discussion, I come to the conclusion that first Party has not proved that there is inordinate delay on the part of Second Party workers to raise dispute before the first party. The delay of 5 years and 2 months caused by Second Party workers to raise the dispute is not an unreasonable delay. Moreover, in view of the ratio laid down by Hon'ble Supreme Court in Ajaib Singh V/s. Sirhind Co.-Op. Marketing Cum Processing Service Society Ltd. and Anr. reported in 1999 I CLR 1068 and Kuldeep Singh V. G.M. Instrument Design Development and facilities Center and Anr. reported in 2011 I CLR 5, the Tribunal cannot reject the relief in favour of Second Party workers, if they prove illegal termination. Hence, I answer Issue No. 3-A in the Negative.

## ISSUE No. 2

17. Undisputedly, the Second Party workers started to work as pigmy agents in Mahadwara Road Branch of



First Party from 12.12.1991 onwards till 14.08.1996. In the evidence at Exh. U-11, the Second Party workers have deposed that they have worked and rendered more than 240 days service in every year. The witness of First Party Shri Anil kumar Kadare in his cross-examination at Exh.C-24 has admitted that the record of collection of deposits and record to be maintained by Second Party workers of deposits is available in Mahadwar Branch of United Western Bank. He further admitted that the Second Party workers used to work on an average 26 days in a month and record of their working is in Mahadwar Branch. He has also admitted that from 1996 onwards the Second Party workers were working with the First Party and on 14.08.1996 the Bank had stopped to give work of Madhu Sanchay Scheme to Second Party workers. In these circumstances, there was no difficulty for the Bank of produce on record the documents in respect of Second Party workers about collection of deposits and the payment/commission which was made by the First Party to the Second Party workers towards their collection and the number of days they have worked. In the cross-examination, the witness of First Party has avoided to give answers as to whether the Bank had given any written notice to the Second Party workers while stopping work of Second Party workers. He has avoided to give answer whether the First Party Bank had given compensation amount, notice pay in lieu of notice after 14.08.1996. He has admitted that from 14.08.1996 except Madhu Sanchay Scheme other schemes were in existence in the Bank. In the cross-examination Second Party had given suggestion to the said witness that the workers had demanded work of collection of deposit in other scheme the same was not given.

The statement of justification which is given by the Second Party workers to the Assistant Commissioner of Labour on 28.10.2001 at Exh.U.18, which also states that they have worked for more than 240 days in every year. The Second Party workers were collecting pigmy amount from the pigmy account holders till 13.08.1996. From this fact inference can be drawn that the Second Party workers have continuously worked for more than 240 days during a period of preceding 12 months from 13.08.1996. I do not see any reason to disbelieve the evidence of the Second Party workers on the fact that they had continuously worked for more than 240 days during a period of preceding 12 calendar months from 13.08.1996

From the above evidence, it is clear that First Party Bank had not followed the procedure prescribed under 25-F, G and H of the Industrial Disputes Act, 1947 nor it followed due process of law while not allowing the Second Party workers to work, which amounts to illegal termination. Hence, I answer Issue No. 2 in the affirmative.

### ISSUE NO. 3

18. For the sake of arguments let us consider that the First Party had retrenched the Second Party workers as the Madhu Sanchay scheme was closed and no work of collection of deposits was available with the First Party.

In that case, it was necessary for the First Party to follow the provisions of section 25-F, G and H of the Industrial Disputes Act, 1947 at the time of retrenchment of Second Party workers. On the contrary, the First Party neither in its written statement alleged that it has retrenched the Second Party workers nor in its evidence it has anywhere stated that the Second Party workers were retrenched by it by following procedure laid down in sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. It is not the case of the First Party that it has issued retrenchment notice, or displayed seniority list etc. while putting an end to the services of the First Party.

19. The Second Party workers have stated that they had worked for more than 240 days continuously in every year. They have stated that in every year they had rendered more than 240 days continuous service. Undisputedly, the First Party did not allow the Second Party workers to work from 14.8.1996 onwards. Therefore, it was obligatory on the part of the First Party to follow due process of law while putting an end to the service of the Second Party workers.

From the above discussion it has become abundantly clear that the First Party had orally terminated the Second Party workers on 14.8.1996 without following due process of law. The Second Party workers had given the approach notice to First Party on 08.10.2001 and had given statement of justification to the Assistant Commissioner of Labour of Central Government on 23.10.2001. The Assistant Commissioner of Labour had referred the reference to this Tribunal by passing the order dated 27.8.2002. The Second Party workers have not brought on record the amount of commission which they used to receive from the First Party. They have not brought on record any evidence on the point as to whether they remained unemployed after 14.08.1996. Both the parties have taken the references very lightly. The age of the second Party workers is above 58 years. It will not be proper to give relief of reinstatement to the Second Party workers after a period of 17 years. In these circumstances, it is necessary to mould the relief of reinstatement and back wages by way of giving compensation. Hence, I answer Issue No. 3 accordingly and proceed to answer the reference partly in affirmative.

### AWARD

- (I) Reference is answered partly in affirmative.
- (II) Each of the Second Party worker in Reference (IT) Nos. 3 to 6 of 2002 is entitled to an amount of compensation of Rs. 50,000/- each in lieu of reinstatement and back wages.
- (III) Award be drawn accordingly.
- (IV) Copy of Award be kept in Reference (IT) Nos. 4 to 6 of 2002.

Place: Kolhapur.

Date: 24.04.2013

K.R. PETHKAR, Presiding Officer



नई दिल्ली, 29 नवम्बर, 2013

**का.आ. 2651.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) कि धारा 17 के अनुसरण में केन्द्रीय सरकार यूनाइटेड वेस्टर्न बैंक लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कोल्हापुर के पंचाट (संदर्भ संख्या 5/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[सं एल-12012/179/2002-आईआर (बी-1)]  
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2651.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 5/2002 of the Industrial Tribunal, Kolhapur as shown in the Annexure, in the industrial dispute between the management of The United Western Bank Ltd. and their workmen, received by the Central Government on 29/11/2013.

[No. L-12012/179/2002-IR(B-I)]  
SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, KOLHAPUR

#### Reference (IT) No. 3 to 6 of 2002.

##### Reference (IT) No. 3 of 2002.

The United Western Bank Ltd.,  
Raviwar Peth, Satara.  
Thru. Its General Manager.  
Industrial Development Bank of India,  
WTC Complex, Cuff Parade, Mumbai ...First Party  
And

Shri. Ravindra Raghunath Ashtekar,  
2804, A Ward, Sarnaik Wada,  
Kolhapur. .... Second Party

##### Reference (IT) No. 4 of 2002.

The United Western Bank Ltd.,  
Raviwar Peth, Satara.  
Thru. Its General Manager.  
Industrial Development Bank of India,  
WTC Complex, Cuff Parade, Mumbai ...First Party  
And  
Shri Mahesh Prabhakar Bavadekar,  
2931, A Ward, Mahadwar Road,  
Kolhapur. ....Second Party

#### Reference (IT) No. 5 of 2002.

The United Western Bank Ltd.,  
Raviwar Peth, Satara.  
Thru. Its General Manager.  
Industrial Development Bank of India,  
WTC Complex, Cuff Parade, Mumbai ...First Party  
And

Shri Mukund Ganesh Kulkarni  
2663, A Ward, Diwan Bol  
Kolhapur. ....Second Party

#### Reference (IT) No. 6 of 2002.

The United Western Bank Ltd.,  
Raviwar Peth, Satara.  
Thru. Its General Manager.  
Industrial Development Bank of India,  
WTC Complex, Cuff Parade, Mumbai ...First Party  
And

Shri Prakash Baburao Pawar  
23/1, Lay out No.3, Baba Jarag Nagar,  
Kolhapur. ....Second Party

CORAM: SHRI K.R. PETHAKAR, Presiding Officer

**APPEARANCES:** Shri S.R. Rane, advocate for the First Party.  
Shri D.N. Patil, advocate for the Second Party workers.

#### COMMON JUDGEMENT (24.04.2013)

1. Central Government by order dated 27.08.2002 in exercise of powers conferred under clause(d) of Sub-section(1) and Sub-section (2A) of Section 10 of Industrial Disputes Act, 1947 referred these disputes between the above named parties for adjudication to this Tribunal in respect of the action of the management of First Party in terminating/discontinuing the services of concerned Second Party Workers.

The facts in brief are that,

2. The Second Party workers were serving with the First Party since the dates mentioned as Pigmy Deposit Collectors with clean and meritorious service record. It is alleged by the Second Party workers that their services were terminated by the First Party without following procedure laid down under the Industrial disputes Act, 1947 w.e.f. 14.08.1996. Therefore, the Second Party workers raised dispute before Assistant Commissioner of Labour(Central) Pune, and after recording its failure, the Central Government referred these four references for adjudication.

3. The First Party workers alleged that being appointed as Pigmy Deposit Collectors, there was employee-employer relationship between the First Party and the concerned Second Party workers. It is alleged by the Second Party workers that the branch manager of First Party illegally and improperly terminated the services of the Second Party workers w.e.f. 14.08.1996. The Second Party workers alleged that they approached the concerned branch managers time to time for reinstatement. They also alleged that they were continuously ventilating their grievances. As their requests were not considered by the First Party, they sent demand notices u/s.2-A of Industrial Disputes Act, 1947 on 08.10. 2001. The Second Party workers submitted its statement of justification on 23.10.2001 along with request letter for intervention to Conciliation authority under the Industrial Disputes Act, 1947.

4. The Second Party alleged that they had worked for more than 240 days continuously in every year. However, to deprive them from legal status and benefits, First Party continued them on the bond as Pigmy Deposit Collectors. The Second Party alleged that the work performed by them is of perennial in nature. The Second Party workers alleged that the First Party had not paid wages on par with other employees nor given benefits.

5. It is alleged that while terminating the services of the Second Party workers the First Party has not followed proper procedure under the Industrial Disputes Act, 1947. As Pigmy Deposit Collectors they used to collect the deposits from the customers and fill in various registers. Lastly the Second Party workers alleged to allow the reference holding the termination effected is illegal, improper and bad in law. Therefore, the Second Party prayed to declare the termination effected by First Party w.e.f. 14.08.1996 as illegal and improper and bad in law with a direction to reinstate the Second Party workers with full back wages.

6. The First Party by its written statement vide Exh. C-7 denied all the material allegations made against it by the Second Party workers. It is contended by the First Party that reference is misconceived, baseless and untenable. The First Party alleged that the Second Party workers are not workmen within the meaning of section 2(s) of Industrial Disputes Act, 1947. The First Party disputed the relationship of employer and employee between the parties.

7. The First Party submitted that the reference is at belated stage and the approach of the of the Second Party workers is casual and careless. The First Party alleged that there is delay of 5 years and 2 months in raising dispute.

The First Party alleged that it is engaged in the business of banking and Second Party workers were collecting deposits on commission basis. The First Party was not having control over the working hours of Second Party workers. The Madhu Sanchay Deposit scheme became unremunerative and uneconomical. Therefore the First Party terminated the scheme w.e.f. 14.08.1996. This termination of agreement is misinterpreted by the Second Party workers as termination of their services. Hence, in this background, First Party prayed for rejection of reference with costs.

8. In this background of facts, following issues were framed at Exh. O-3 to which I record my findings as under.

#### ISSUES

#### FINDINGS

- |  |                        |
|--|------------------------|
| 1. Whether the Second Party proves that they were workmen of First Party?                                | In the affirmative.    |
| 2. Whether the Second Party proves that they were illegally terminated from the services by First Party? | In the affirmative.    |
| 3. Whether the Second Party is entitled for reliefs claimed in the statement of claim?                   | Partly in affirmative. |
| 3 a. Whether the First Party proves that there is inordinate delay in raising the dispute?               | In the negative.       |
| 4. What Award?   | As per final order.    |

#### REASONS

9. The Second Party has examined Shri Ravindra Raghunath Ashtekar at Exh. U-11. The first party has examined its Assistant General Manager, Shri Anilkumar Vilas Kadre at Exh. C-24. The parties are relying on the documents which they have produced on record.

#### ISSUE NO.1

10. The learned advocate for the first party has submitted that Second Party workers have not pleaded nature of duties performed by them. He has submitted that the oral evidence which the Second Party workers have led is without pleadings and the same cannot be considered. He has submitted that the Second Party workers were not under the control of the first party. He has submitted that the authority of Hon'ble Supreme Court in **Indian Banks Association** is not helpful to the Second Party workers as in para 4 of the said authority, the Hon'ble Supreme Court has not laid down the law that pigmy agent is a workman as per Industrial Disputes Act,

1947. He has submitted from the para 24 of the said authority it can be seen that evidence had come before the Tribunal that the deposit collectors are workmen within the meaning of Industrial Disputes Act, 1947. He has submitted that the Second Party workers were not workmen as the working hours of the Second Party workers were not fixed and they used to collect the pigmy deposits from the customers as per their wish. He has submitted that they used to decide as to from which pigmy account holder they would first collect the Pigmy amount. He has submitted that the Second Party workers used to collect pigmy deposit from the pigmy account holders after banking hours. He has submitted that bank used to give commission to the Second Party workers on the basis of pigmy deposits which they have collected during the concerned period. He has submitted that the commission amount which the Second Party workers used to receive in every month used to differ month to month because of variance in collection of pigmy deposits by the Second Party workers.

The learned advocate relied on unreported decision of Hon'ble Karnataka High Court in case of **Syndicate Bank V/s Vasanth Gururao Kusanur in Writ Petition No. 7057 of 2006**. In the said authority, the Hon'ble Karnataka High Court has followed the authority of Hon'ble Supreme Court in **Indian Bank's Association (Supra)**. Indirectly the First Party is admitting that the Second Party workers are workmen as per the provisions of Industrial Disputes Act, 1947.

In the authority of **Indian Bank's Association (Supra)** the Hon'ble Apex Court observed that, "We also accept the submission that the banks have not control over the deposit collectors. Undoubtedly the deposit collectors are free to regulate their own hours of work, but that is because of the nature of the work itself. It would be impossible to fix working hours for such deposit collectors because they have to go to various depositors. This would have to be done at the Convenience of the depositors and at such times as required by the depositors. If this is so, then not time can be fixed for such work. However, there is control inasmuch as the deposit collectors have to bring the collections and deposit the same in the banks by the very next day. They have then to fill in various forms, accounts, registers and passbooks. They also have to do such other clerical work as the Bank may direct. They are, therefore, accountable to the Bank and under the control of the Bank.

We also see no force in the contention that Section 10 of the Banking Regulation Act prevents employment of persons on commission basis. The proviso to section 10

makes it clear that commission can be paid to persons who are not in regular employment undoubtedly, the deposit collectors are not regular employees of the Bank. But they, nevertheless, are workers within the meaning of the term as defined in the Industrial Disputes Act. There is clearly a relationship of master and servant between the deposit collectors and the bank concerned."

Moreover, in reference strict rules of the Civil Procedure Code and Indian Evidence Act are not applicable. In the Statement of claim the Second Party workers have pleaded that they were appointed through branch managers as pigmy deposit collectors and they have worked under the kind control of the First Party as well as kind control of the branch manager. They have pleaded that their duty was to collect maximum deposits from the pigmy account holders. In the examination in chief at para 4 and 5, the second party workers have stated nature of duties performed by them.

11. Learned Advocate for the first party has submitted that the Second Party workers have entered into agreements and as per the terms and conditions laid down in the agreements, the Second Party workers were only authorized to collect deposits under Madhu Sanchay Scheme. He has submitted that as per the agreement, there was relationship of principal and agent between the parties. He further submitted that the Second Party workers were appointed only to collect deposits under the Madhu Sanchay Scheme. They were not having any involvement in any other activities of the First Party. He has submitted that Madhu Sanchay Scheme became unremunerative and uneconomical. He has submitted that the First Party decided to terminate scheme and accordingly the First Party terminated the scheme w.e.f. 14.08.1996. He has submitted that as a result of termination of the scheme, the said agreement did not survive and came to an end. He has submitted that the relationship of Principal and Agent between First Party and Second Party came to an end on 14.08.1996 as on the same day the Madhu Sanchay Scheme came to an end.

In the Cross examination, the Second Party workers at Exh. U-11 have admitted that when they started working as pigmy agents, at that time, the Bank has entered into an agreement/contract with them. They have further admitted that as per the agreement they had worked till 13.08.1996 as pigmy agents. They also admitted that they used to collect pigmy deposits under the Madhu Sanchay Scheme and the Bank had closed the scheme on 14.08.1996. They have further admitted that except working for Madhu Sanchay Scheme, they were not doing any work of United Western Bank.

In the cross examination, at Exh. C-24, Shri, Anilkumar Kadre has admitted that like Madhu Sanchay Scheme at that time there were many other schemes functioning in the First Party. He was unable to state as to whether the Second Party workers have demanded the work of collection of deposits in other schemes from the First Party on 14.08.1996, and the same was not given. The admissions given by the Second Party workers are not helpful to the First Party as the First Party has failed to produce on record the original agreements or the copy of the agreements which were executed between the parties. It is not the case of the First party that in the agreement there is clause that if the Madhu Sanchay Scheme automatically comes to an end, the agreement will also automatically come to an end. The First Party has not produced documentary evidence on record to show that the Madhu Sanchay Scheme had become unremunerative and uneconomical. It is not the case of the First Party that due to the said scheme, the First Party has sustained loss. It is not the case of the First Party that the Customers of the said scheme had reduced. Only on the basis of admission given by Second Party workers one cannot come to the conclusion that contract/agreement was only for Madhu Sanchay Scheme. The important document *i.e.* contract/agreement is not brought before the Tribunal for the reason best known to the First Party. It is not the case of the First Party that it has destroyed the contract/agreement executed between the First Party and the Second Party workers. The First Party has not given any notice or order to Second Party workers on 14.08.1996 that as per the agreement/contract, the relationship of principal and agent between the parties have come to an end. Considering the admissions given by the Assistant General Manager of the First Party as at that time many other schemes were functioning like Madhu Sanchay Scheme, one cannot say that there was no work available with the First Party after closure of the Madhu Sanchay Scheme. The First Party being a banking Industry, it cannot be said that there was no work available for pigmy agents to collect deposits from the customers.

From the above discussion and as per the ratio laid down by Hon'ble Supreme Court in *Indian Bank's Association (Supra)*, I come to the conclusion that the Second Party workers are workers and there was relationship of employer and employee between the parties. Hence, I answer Issue No.1 in the affirmative.

### ISSUE No. 3-A

12. The learned advocate for the First Party submitted that Second Party workers were not at all espousing the alleged cause of action which arose after alleged termination of the Second Party workers. He has submitted that the Second Party workers were waiting and

watching for the decision of Hon'ble Supreme Court in *Indian Bank's Association (Supra)*. He has submitted that the Second Party workers were/are not permitted to enjoy the fruits which came from the decision of *Indian Bank's Association (Supra)*. He has submitted that the Second Party workers have not explained delay in raising their disputes in the statement of claims. He submitted that there is delay of five years and two months in raising disputes and same is not explained. He submitted that the Second Party workers came to know about the decision on *Indian Bank's Association (Supra)* and thereafter Second Party workers raised the dispute before the First Party. He has submitted that when the Second Party workers for the first time had raised the dispute, at that time, dispute had become stale and same was not in existence.

In support of his submissions, he has relied upon the decision in case of *Bhoop Singh V/s Union of India* reported in 1993 I L.L.J.260 (S.C.) The Hon'ble Supreme Court has observed that It is expected of a Government servant who has a legitimate claim to approach the Court for the relief within a reasonable period, assuming no fixed prayer of limitation applies.

The Hon'ble Supreme Court further observed that, "This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty two years, without any cogent explanation for the inordinate delay, merely because other similarly dismissed had been reinstated as a result of their earlier petitions being allowed."

In that matter, the Delhi Armed Police participated in a mass agitation on April 14, 1967. The services of the agitating police constables were terminated on that account without specifying that reason for the termination. The dismissed constables who were not taken back inservice filed Writ Petitions in Delhi High Court in 1969 and 1970 which were allowed by Delhi High Court. Subsequently, some other constables also filed Writ Petitions in Delhi High Court which too were allowed. Another set of similarly dismissed constables then filed Writ Petitions in the Delhi High Court challenging the termination of their services contending that their claim was identical with that of the Petitioners in the Writ Petitions filed in 1978. These Writ Petitions were transferred to Central Administrative Tribunal which held granted the same relief as was granted to the Petitioners in the Writ Petitions filed in the High Court in 1978. The Delhi Administration preferred appeals in Hon'ble Supreme Court against the decision. Those appeals were dismissed.

The petitioner Bhoop Singh was terminated on 03.08.1967 and he had filed O.A. No.753 of 1989 in the Central Administrative Tribunal praying for reinstatement



in service and all consequential benefits on the ground that his case is similar to that of the Police Constables who had succeeded in the earlier rounds of litigation. The Tribunal had rejected the Petitioner's application on the ground that it is highly belated and there is no cogent explanation for the inordinate delay of twenty two years in filing the application on March 13, 1989 after termination of the Petitioner's service in 1967.

In the matter before Hon'ble Supreme Court, the Petitioner had knowledge that colleagues were reinstated in the year 1969 and 1970. After knowing fully well the Petitioner had kept quiet for twenty two years. In that matter, the Petitioner knew in the year 1969 as to what was the remedy available to him. In the present matter the Second Party workers had no knowledge that they come under the definition of workman. After having knowledge about their right they had raised dispute.

The Second Party workers are not Government servants. The First Party is a Banking industry and Second Party workers are workmen. The Second Party workers have immediately raised dispute after 5 years and 2 months. The reason behind the delay to raise the dispute is that Second Party workers waited for the decision of Hon'ble Supreme Court. The delay of 5 years and 2 months cannot be called as inordinate delay. No Court has defined as to how to calculate and how to consider reasonable period for raising a dispute. The reasonable period depends upon case to case.

Hence, with due respect to the Hon'ble Supreme Court, the said authority is not helpful to First Party.

13. The learned advocate for the First Party has relied upon the authority in case of S.S. Rathore V/s. State of Madhya Pradesh reported in 1990 I LAB.I.C. 398. In this matter the Hon'ble Supreme Court observed that, "We are also of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made though the remedy has been availed of a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle."

The Hon'ble Supreme Court further observed that, It is appropriate to notice the provision regarding limitation under S.21 of the Administrative Tribunals Act. Sub-Section (1) has prescribed a period of one year for making

of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government Servants are concerned. Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

In the matter before Hon'ble Supreme Court the plaintiff was a Government Servant of Madhya Pradesh and he was dismissed from services by the Collector on 13.01.1966. He preferred an appeal to the Divisional Commissioner and that appeal was dismissed on 31.08.1966. The order of dismissal of the appeal was communicated to the plaintiff on 19.09.1966. The plaintiff gave notice under Section 80 of the Code of Civil Procedure on 17.06.1969 and filed his suit on 30th September 1989, asking for a declaration that the order of dismissal was inoperative and he continued to be in service. The suit which was filed by the plaintiff was dismissed in the Courts below on acceptance of the defence plea that plaintiff had not filed suit within three years from the date when the cause of action first arose, as required under Art 58. of the First Schedule of the Limitation Act, 1963.

With due respect to the Hon'ble Supreme Court, the said decision is not helpful to the first party as the provisions of Limitation Act are not applicable to the Reference under the Industrial Disputes Act, 1947. Moreover the said ratio is laid down with respect to suits outside the purview of the Administrative Tribunals Act not with respect to Reference.

14. The learned advocate for the First Party has relied upon the unreported authority of Hon'ble Karnataka High Court in case of Syndicate Bank V/s. Vasanth Gururao Kusanur in Writ Petition No. 7057 of 2006. While deciding the Writ Petition the Hon'ble Karnataka High Court has followed the ratio laid down by Hon'ble Supreme Court in cases of

- (I) 2000 SCC (L & S) 283—Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and others.
- (II) (2006) 5 SCC 433 U.P. State Road Transport Corporation Vs. Babu Ram.
- (III) 2007 AIR SCW 2882—Dharappa Vs. Bijapur Cooperative Milk Producers Societies Union Ltd.

In the matter before the Hon'ble Karnataka High Court the Respondent was terminated on 26.08.1991 and he has raised the dispute on 12.12.2001. The case of the Bank was that by the time the Respondent had raised the dispute, it had become stale and did not exist between the parties.

**(I) 2000 SCC (L & S) 283—Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and others.**

In the matter before Hon'ble Supreme Court the Respondent had admitted that he had committed misappropriation, expressed unconditional regret and prayed the punishment of dismissal be not imposed on him. The Respondent was dismissed from the services from 11 August, 1972. He filed appeal before the Board of Directors of Bank. His appeal was dismissed by order dated 3.01.1973. He got whatever benefits were due to him under the rules framed by the Bank. Then, after a period of seven years he served a notice on the Bank contending that he was discriminated as two other employees of the Bank under same situation were reinstated in the service of the Bank. The Respondent had started to raise the dispute before appropriate forum. The Respondent moved application before Assistant Commissioner of Labour of the Central Government for the relief. The Assistant Commissioner of Labour held that there was no scope for formal proceeding. The Respondent filed Writ Petition. The Hon'ble High Court directed the Assistant Commissioner of Labour to submit its report u/s. 4(2) of the Act. The same was sent to the Hon'ble High Court. The Central Government declined to make reference u/s. 10 of the Act. The Respondent again filed Writ Petition in Hon'ble High Court, which was disposed of with a direction to the Central Government to re-examine the matter against which the Bank came before the Hon'ble Supreme Court.

**(II) (2006) 5 SCC 433 U.P. State Road Transport Corporation Vs. Babu Ram.**

The Respondent and others were terminated from the service in the year 1983. The Dy. Labour Commissioner referred the dispute by its order dated 29.8.1998. The Respondent had raised the claim after 15 years. The Hon'ble Supreme Court had followed the ratio laid down in *Nedungadi Bank Ltd.* (Supra).

**(III) 2007 AIR SCW 2882—Dharappa Vs. Bijapur Cooperative Milk Producers Societies Union Ltd.**

Section 10(4A) provides an alternative procedure to seek redressal in regard to an order of termination, by making an application directly to the Labour Court, within six months from the date of communication of the order of termination, without the intervention or assistance of an employees union and without having to approach the appropriate Government for making a reference. Such a provision cannot be interpreted as reviving stale and dead claims nor as enabling a workman to seek remedy beyond six months from the date of communication except to the extent expressly provided for. The true and proper interpretation of Section 10(4A) is that an individual workman can apply to the Labour Court for adjudication

of the dispute relating to an order of discharge/ dismissal/ retrenchment/ termination within six months from the date of communication to him, of such order of termination.

In that matter the appellant was terminated with effect from 01.03.1980. He made an application under Section 10(4A) of Industrial Disputes Act, 1947 on 04.10.1988 before Labour Court, Hubli for declaration that his termination be declared as null and void. In Industrial Disputes Act there is Karnataka Amendment to Section 10 by way of insertion of Sub-Section (4A) with effect from 07.04.1988. The said sub-Section states that workman should directly approach the Labour Court within six months from the date of communication of the order.

With due respect to the Hon'ble Supreme Court and Hon'ble Karnataka High Court the said authorities are not helpful to First Party. The First Party has not challenged the order of reference passed on 27.08.2002. The First Party is now estopped from raising the contention that Second Party workers were not diligent in taking action when the alleged cause of action for the dispute arose when the Second Party workers were allegedly terminated on 29.08.1996. The First Party has not specifically pleaded in its written statement that the dispute had become stale and the same did not exist when the Second Party workers have sent approach notice on 08.10.2001 to the First Party. The First Party has not produced on record a copy of reply to show that it had given reply to the approach notice of the Second Party workers. Nor it is the case of the First Party that it had given reply to the approach notices of the Second Party workers. The Second Party workers have not received any compensation amount from the First Party. The First Party has not stated and made clear in its written statement as to whether it had given reply to the statement of justification before Conciliation Authority. There is no material on record to come to the conclusion that the First Party has stated before the Conciliation Authority that the Second Party workers were not diligent in espousing the alleged cause of action and the dispute had become stale and same is not existence. The Second Party workers have produced on record the approach notice dated 08.11.2001, which shows that they have raised dispute within a reasonable time, after the decision of Hon'ble Supreme Court in **Indian Bank's Association (Supra)**. The provisions of Limitation Act are not applicable to the present references which are referred to this Tribunal under the provisions of the Industrial Disputes Act, 1947. Delay in raising dispute and dispute becoming stale or coming to an end are two different issues to each other. Delay in raising dispute means that dispute was in existence when it was raised. The defence raised by First Party is devoid of merit as the First Party has not proved as to what prejudice was caused to it due to delay in raising dispute. The plea of

delay which is raised by First Party is required to be proved by showing real prejudice caused to it and not by real hypothetical. The Second Party workers were terminated all of a sudden on one fine day morning without giving any intimation to them. The Second Party workers are the pigmy agents. Their income was not fixed. In these circumstances whether it was expected from them to raise their dispute immediately against the First Party or first they should make arrangement for their family's survival.

15. In the decision of Hon'ble Supreme Court in case of **Ajiab Singh V/s. Sirhind C.-Op. Marketing Cum Processing Service Society Ltd. and Anr. reported in 1999 I CLR 1068** It is observed that the, Industrial Disputes Act, 1947-S. 10-Limitation Act, 1983-Art. 137-Applicability to Industrial Disputes Act, 1947-Appellant was dismissed from service on 16.07.1974-He raised demand on 08.12.1981-In consequent reference to Labour Court, Respondent approached High Court mainly on the ground of delay in claiming reference-Respondent having succeeded in High Court on the ground that the appellant had slept over for years in raising demand, this appeal is filed-Supreme Court after taking into consideration the objectives in enacting Industrial Disputes Act, 1947, the case law and the fact that Limitation Act is not made applicable to the Industrial Disputes Act, 1947, held that relief under the Act cannot be denied to the workman merely on the ground of delay in Limitation Act is not applicable and in case delay is established, the Labour Court or Tribunal can mould relief as to back wages etc.

16. In the authority of Hon'ble Supreme Court in case of **Kuldeep Singh V.G. M. Instrument Design Development and facilities Center and Anr. reported in 2011 I CLR 5**, observed that though the law does not prescribe any time limit for appropriate Government to exercise its power u/s. 10 of Industrial Disputes Act, 1947, the said power is to be exercised reasonably and in a rationale manner.

From the above discussion, I come to the conclusion that first Party has not proved that there is inordinate delay on the part of Second Party workers to raise dispute before the first party. The delay of 5 years and 2 months caused by Second Party workers to raise the dispute is not an unreasonable delay. Moreover, in view of the ratio laid down by Hon'ble Supreme Court in **Ajaib Singh V/s. Sirhind Co.-Op. Marketing Cum Processing Service Society Ltd. and Anr. Reported in 1999 I CLR 1068** and **Kuldeep Singh V. G.M. Instrument Design Development and facilities Center and Anr. reported in 2011 I CLR 5**, the Tribunal cannot reject the relief in favor of Second Party workers, if they prove illegal termination. Hence, I answer Issue No. 3-A in the Negative.

## ISSUE NO. 2

17. Undisputedly, the Second Party workers started to work as pigmy agents in Madhadwara Road Branch of First Party from 12.12.1991 onwards till 14.08.1996. In the evidence at Exh. U-11, the Second Party workers have deposed that they have worked and rendered more than 240 days service in every year. The witness of First Party Shri Anilkumar Kadare in his cross-examination at Exh. C-24 has admitted that the record of collection of deposits and record to be maintained by Second Party workers of deposits is available in Mahadwar Branch of United Western Bank. He further admitted that the Second Party workers used to work on an average 26 days in a month and record of their working is in Mahadwar branch. He has also admitted that from 1996 onwards the Second Party workers were working with the First Party and on 14.08.1996 the Bank had stopped to give work of Madhu Sanchay Scheme to Second Party workers. In these circumstances, there was no difficulty for the Bank to produce on record the documents in respect of Second Party workers about collection of deposits and the payment/commission which was made by the First Party to the Second Party workers towards their collection and the number of days they have worked. In the cross-examination, the witness of First Party has avoided to give answers as to whether the Bank had given any written notice to the Second Party workers while stopping work of Second Party workers. He has avoided to give answer whether the First Party Bank had given compensation amount, notice pay in lieu of notice after 14.08.1996. He has admitted that from 14.08.1996 except Madhu Sanchay Scheme other schemes were in existence in the Bank. In the cross-examination Second Party had given suggestion to the said witness that the workers had demanded work of collection of deposit in other scheme the same was not given.

The statement of justification which is given by the Second Party workers to the Assistant Commissioner of Labour on 28.10.2001 at Exh. U. 18, which also states that they have worked for more than 240 days in every year. The Second Party workers were collecting pigmy amount from the pigmy account holders till 13.08.1996. From this fact inference can be drawn that the Second Party workers have continuously worked for more than 240 days during a period of preceding 12 months from 13.08.1996. I do not see any reason to disbelieve the evidence of the Second Party workers on the fact that they had continuously worked for more than 240 days during a period of preceding 12 calendar months from 13.08.1996.

From the above evidence, it is clear that First Party Bank had not followed the procedure prescribed under 25-F, G and H of the Industrial Disputes Act, 1947 nor it



followed due process of law while not allowing the Second Party workers to work, which amounts to illegal termination. Hence, I answer Issue No. 2 in the affirmative.

### ISSUE NO. 3

18. For the sake of arguments let us consider that the First Party had retrenched the Second Party workers as the Madhu Sanchay scheme was closed and no work of collection of desposits was available with the First Party. In that case, it was necessary for the First Party to follow the provisions of section 25-F, G and H of the Industrial Disputes Act, 1947 at the time of retrenchment of Second Party workers. On the contrary, the First Party neither in its written statement alleged that it has retrenched the Second Party workers nor in its evidence it has anywhere stated that the Second Party workers were retrenched by it by following procedure laid down in sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. It is not the case of the First Party that it has issued retrenchment notice, or displayed seniority list etc. while putting an end to the services of the First Party.

19. The Second Party workers have stated that they had worked for more than 240 days continuously in every year. They have stated that in every year they had rendered more than 240 days continuous service. Undisputedly, the First Party did not allow the Second Party workers to work from 14.08.1996 onwards. Therefore, it was obligatory on the part of the First Party to follow due process of law while putting an end to the service of the Second Party workers.

From the above discussion it has become abundantly clear that the First Party had orally terminated the Second Party workers on 14.08.1996 without following due process of law. The Second Party workers had given the approach notice to First Party on 08.10.2001 and had given statement of justification to the Assistant Commissioner of Labour of Central Government on 23.10.2001. The Assistant Commissioner of Labour had referred the reference to this Tribunal by passing the order dated 27.08.2002. The Second Party workers have not brought on record the amount of commission which they used to receive from the First Party. They have not brought on record any evidence on the point as to whether they remained unemployed after 14.08.1996. Both the parties have taken the references very lightly. The age of the second Party workers is above 58 years. It will not be proper to give relief of reinstatement to the Second Party workers after a period of 17 years. In these circumstances, it is necessary to mould the relief of reinstatement and back wages by way of giving compensation. Hence, I answer Issue No. 3

accordingly and proceed to answer the reference partly in affirmative.

### AWARD

- (I) Reference is answered partly in affirmative.
- (II) Each of the Second Party worker in Reference (IT) Nos. 3 to 6 of 2002 is entitled to an amount of compensation of Rs. 50,000/- each in lieu of reinstatement and back wages.
- (III) Award be drawn accordingly.
- (IV) Copy of Award be kept in Reference (IT) Nos. 4 to 6 of 2002

Place: Kolhapur.

Date: 24.04.2013

K.R. PETHKAR, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2013

**कांआ 2652.**— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट संदर्भ संख्या 243/97 को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[सं एल-12012/159/96-आई आर (बी)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2652.**— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 243/97 of the *Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur* as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 29/11/2013.

[No. L-12012/159/96-IR(B)]

SUMATI SAKLANI, Section Officer

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

**NO. CGIT/LC/R/243/97**

PRESIDING OFFICER: SHRI R.B. PATLE

Dy. General Secretary,  
SBI Staff Congress (INTUC),  
5/235, Pragati Stage Bank Staff Colony,  
Vikas Nagar,  
Jabalpur

...Workman/Union



Versus

Dy. General Manager,  
Zonal Office,  
State Bank of India,  
Marhatal,  
Jabalpur

...Management

### AWARD

(Passed on this 23rd day of October 2013)

1. As per letter dated 19-8-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made of this Tribunal under Section - 10 of I.D. Act, 1947 as per Notification No. L-12012/159/96-IR(B). the dispute under reference relates to:

"Whether the action of the management of State Bank of India, Umaria Branch in considering Shri Chandrashekhar, Part time sweeper as willingly left the job after issue of a notice dated 26-12-94 and payment of wages at the rate of 1/3rd of the regular wages although employed for more than 13 hours a week is justified? If not, what relief the concerned workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party General Secretary of the Union filed statement of claim at page 3 to 7. The case of workman is that Central Govt. has referred dispute for adjudication. That workman Chandra Shekhar was working as Sweeper in State Bank of India Umaria Branch from 5-6-92. He was paid 1/3rd salary. From 17-3-94, he was given permanency status. The post was vacant. The wife of workman Chandrashekhar was suffering from heart disease. To look after her treatment, he was remaining absent from duty. It is also alleged that while working at Umaria, he was insulted and abused by co-workers. He had reported to the management through Union but no action was taken. He submitted report to police but no action was taken. That because of insulting treatment and illness of wife, the workman remained absent from duties. He had requested for transfer to Jabalpur because of his illness and insulting treatment at Umaria. His request was not considered. Because of difficulties, workman remained absent from duty, his services were discontinued without paying retrenchment compensation, without holding enquiry. That there are no rules of voluntary retirement of the employee. On such ground, workman is praying for his reinstatement with consequential benefits. he was alleged that termination of his service is in violation of Section 25-F, G of I.D. Act.

3. IInd party management filed Written Statement at Page 19 to 35. Preliminary objection is raised by IInd party that Statement of Claim is filed by Shri N.K. Patel claiming General Secretary of State Bank of India Staff Congress, Jabalpur. He is a dismissed employee of the Bank. He is not competent to represent the employee. The workman raised dispute claiming full salary and direction to the

management to take action against Shri Alok Kumar Bannerjee. The conciliation proceedings resulted in failure. The failure report was submitted to Appropriate Government and dispute has been referred. The claim of Ist party workman is false. That Ist party employee was initially employed on daily wagers in SBI Jabalpur during the period from 26-8-85 to 8-11-85 and 11-11-85 to 5-12-85. He was given opportunity for selection for permanent employment in the Bank. He was selected. He was appointed on 1/3rd salary. He was posted at Umaria branch as Sweeper. That Ist party employee accepted terms and conditions of employment communicated to him on 25-5-92. The work of workman was to clean the Bank before commencement of working hours. His working hours was from 7 AM to 9AM. He was confirmed as part time sweeper vide order dated 5-12-92. He had submitted application. The Branch Manager Umaria branch for his transfer to Jabalpur on ground of illness and financial conditions. He also alleged of insulting treatment by other persons. His explanation was called on 6-12-94. Thereafter Ist party workman submitted report to the Branch Manager that Head clerk of the Bank Shri Alok Bannerjee had misbehaved with him using filthy language. IInd party submits that Ist party was making false allegations in order to press his transfer to Jabalpur.

4. IInd party further submits that workman remained absent without application and notice was issued to him to join duty within 30 days. He had failed to join duty. Ist party employee was playing tricks to pressurize IInd party for his transfer to Jabalpur. The allegation of Ist party about illegal termination of his service or violation of Section 25-F of I.D. Act are denied. The contentions of Ist workman are denied. On such ground, IInd party for rejection of claim of workman.

5. Ist party Union filed rejoinder at Page 37, 38 reiterating his contentions in Statement of Claim. He contended that he had joined in SBI as regular employee on 30-6-92. His services were discontinued from 26-9-94. His duty hours were from 7 to 10 AM but he was required to work for whole day. He had submitted application for his transfer to Jabalpur but it was considered by management. That he was insulted in name of caste. Shri Alok kumar Bannerjee was calling him Mehattar etc. Once he was beaten closing the doors. Said incident was flashed in newspaper. It was the reason, he was terminated from service.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- |   |                |
|---|----------------|
| (i) Whether the action of the management of State Bank of India, Umaria Branch in | In Affirmative |
|---|----------------|

considering Shri Chandra-shekhar, Part time sweeper as willingly left the job after issue of a notice dated 26-12-94 and payment of wages at the rate of 1/3rd of the regular wages although employed for more than 13 hours a week is legal?

- (ii) If not, what relief the workman is entitled to?"

Relief prayed by workman is rejected.

### REASONS

7. Workman is challenging his discontinuation from service in pursuance of notice dated 26-12-98 demanding 1/3rd wages to him. However his statement of claim is silent about payment of 1/3rd wages. IInd party management submits that initially Ist party employee was working on daily wages in Jabalpur branch. He was selected and appointed as part time sweeper at 1/3rd salary. He was made permanent part time sweeper as per order dated 5-12-92. Parties are in dispute about voluntary retirement given to workman as per notice dated 26-12-94. Workman and management have filed evidence on affidavit. Various documents are produced by both the parties.

8. Ist party workman Chandrashekhar in his affidavit of evidence has stated that his services re terminated without notice *w.e.f.* 26-12-94. That he is resident of Jabalpur, ailing wife was residing at Jabalpur on ground of illness of wife, he requested for transfer to Jabalpur but was not considered by management. Because of illness of wife, he could not regularly attend his duty. His absence from duty was not deliberate. He also says he belongs to SC and was being ill treated by caste Hindus due to concept of untouchability prevailing in the area. In his cross-examination, he said that he was working as daily wage employer during 26-8-85 to 8-11-85, 11-11-85 to 5-12-85. For regular appointment, he was called for interview. He was selected as part time employee on 1/3rd salary. His pleadings are silent about any grievance about payment of 1/3rd salary.

9. Management filed affidavit of evidence of its witness Shri M.L. Dewangan. Witness of the management has stated that initially the Ist party was working on daily wages in 1985. Thereafter he was appointed as part time employee in 1/3rd salary. The terms and conditions of employment were accepted by workman. Next he states that on 11-6-94, workman requested for his transfer to Jabalpur on ground of illness of his wife. He was remaining absent from duty, his explanation was called. The matter was reported to Asstt. General Manager. Ist party workman had submitted false report against

Shri Alok Kumar Bannerjee about misbehavior and using filthy language etc. The explanation is called from Shri Alok Bannerjee. He denied the allegation. In his cross-examination, management's witness says that he was not working in the branch where Ist party workman was working. From 21-7-08, he was working in Umaria branch. Ist party was initially working on daily wages. Then he was appointed as permanent employee. Workman was terminated from service because of his absence from duty. Except notice issued to him, no other action was taken in the matter.

10. Various documents are produced by workman. Exhibit W-1 is notice dated 25-5-95 calling upon the workman to produce medical certificate about his illness and the bills about purchasing medicine. If the documents are not produced, he will be deemed voluntary retired after one month. Exhibit W-2 is the letter of appointment of workman at Umaria Branch dated 5-6-92. Exhibit W-3 is letter of terms and conditions for appointment, his services were transferable. The documents Exhibit W-5 is letter of appointment as part time sweeper. Exhibit W-6 is letter of permanent appointment on 1/3rd salary as permanent part time sweeper. Exhibit W-7 is certificate issued by the management regarding his appointment on 1/3rd salary, basic Rs. 271.67 with DA and HRA. Exhibit W-8 is nomination form filled by Ist party employee in presence of witnesses. Exhibit W-9 is letter given by Ist party employee for his transfer to Jabalpur on ground of insulting treatment.

11. Management produced document Exhibit M-1 is letter of terms and conditions for appointment. Exhibit M-2 appears part of Exhibit M-1 itself. Exhibit M-3 is letter of appointment as part time sweeper on 1/3rd salary of workman. Exhibit M-4 is order of permanent appointment of part time sweeper on 1/3rd salary of workman. Exhibit M-5 is complaint submitted by employee regarding insulting treatment. Exhibit M-6 is letter given by management calling details of the insulting treatment. Exhibit M-7 is copy of application submitted by workman for his transfer to Jabalpur. Exhibit M-8 is copy of complaint to management of SBI. Exhibit M-9 is letter given by Asstt. General Manager rejecting request for his transfer. Exhibit M-10 is the telegram sent by workman informing management that he will resume duty after recovery from illness. M-11 is notice given by management for production of medical certificate, medical bills regarding his illness. In case of default, it will be deemed that he is voluntarily retired. M-12 is copy of complaint submitted to management. M-13 is copy of memorandum. M-14 is report submitted by Branch Manager regarding absence of workman. Exhibit M-15 is letter sent by Branch Manager dated 30-6-94 recommending his transfer to other place. Document Exhibit M-16, 17 are complaints submitted by workman regarding insulting treatment to him.

12. Notice Exhibit M-18 was issued to workman asking his explanation for production of medical certificate otherwise administrative action would be taken against him. M-19 is report submitted by Branch Manager regarding absence of workman. M-20 is explanation submitted by Alok Kumar Bannerjee. M-18(A) was issued to workman calling his explanation with 3 days. Exhibit M-22 is postal receipt. M-18(b) is notice issued to workman on 21-11-94 asking him to resume duty within 30 days. His attention was pointed out that he was absent from duty from 20-9-94. If he fails to resume his duty within 30 days, it will be deemed that he is voluntary retired. He would be paid one month's pay. Copy of bipartite settlement is filed. Learned counsel for Ist party pointed out my attention to para-17 of the settlement. The relevant verbatim of said clause is reproduced.

"Voluntary Cessation of Employment by the employee.

The earlier provisions relating to the voluntary cessation of employment by the employee in the earlier settlements shall stand substituted by the following:

- (a) When an employee absents himself from work for a period of 90 or more consecutive days, without submitting any application for leave or for its extension or without any leave to his credit or beyond the period of leave sanctioned originally subsequently or when there is a satisfactory evidence that he has taken to employment in India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of the notice, stating inter alia the grounds for coming to the conclusion that the employee has no intention of joining and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service."

13. Despite of notice Exhibit M-18 (b) workman failed to join duty. He had not produced medical

certificates or medical bills regarding his illness. Learned counsel for IInd party Mr. Shrotri relies on ratio held in—

"Case of Punjab and Sind Bank and others versus Sakattar Singh reported in 2001(1) Supreme Court Cases 214. Their Lordship of the Apex Court considering unauthorised absence for 90 or more consecutive days beyond sanctioned period of leave. Under Clause 16 of IV Bipartite Settlement, termination of service in such circumstances held is not a punishment of misconduct, but only a recognition of the realities of the situation and does not result in violation of principles of natural justice. Therefore no domestic enquiry is necessary. Respondent proceeding on sanctioned leave for three days beginning 16-8-93 but remaining absent unauthorisedly for continuous period of 190 days. Appellant Bank issuing 3 letters to him directing him to rejoin duty. Bank issuing notice under clause 16 dated 12-3-94 seeking explanation for unauthorised absence. On 4-4-94 respondent submitting joining report to Branch manager, who not accepting the same, Bank passing order of termination dated 18-4-94. Their Lordship upheld the order holding that the High court erred in holding that order of termination was a nullity because of violation of rules of natural justice.

In case of Syndicate Bank versus General Secretary, Syndicate Bank Staff Association and another reported in 2000(5) Supreme court Cases 65. Their Lordship dealing with departmental enquiry requirement on facts held stood satisfied even without holding a departmental enquiry. Bank employee unauthorisedly absented himself from work for a period exceeding the prescribed limit of 90 days Bank in terms of Bipartite settlement serving notice on him by registered post, requiring him to submit his explanation and to join work within the prescribed time limit of 30 days. The notice further stating that otherwise he would be deemed to have retired. Notice though sent on correct address, received back with the endorsement refused. In such circumstances the Bank held rightly treated the employee to have voluntarily retired from service. Hence termination of his service without holding any departmental enquiry held was not violative of principles of natural justice."

In present case, ratio held in both cases squarely applies. Ist party remains absent without application. Even after notice, he did not submit medical bills, medical certificate. He did not join even as per notice Exhibit M-18 given to him. Case is fully covered under Clause 17

of Bipartite Settlement reproduced above. Therefore I record Point No. 1 in Affirmative.

14. In the result, award is passed as under:—

- (1) Action of the management of State Bank of India, Umaria Branch in considering Shri Chandrashekhar, Part time sweeper as willingly left the job after issue of a notice dated 26-12-94 and payment of wages at the rate of 1/3rd of the regular wages although employed for more than 13 hours a week is proper.

- (2) Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2013

**कांआ 2653.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनाइटेड वेस्टर्न बैंक लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कोल्हापुर के पंचाट (संदर्भ संख्या 6/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[सं एल-12012/177/2002-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2653.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 6/2002) of the Industrial Tribunal, Kolhapur as shown in the Annexure, in the industrial dispute between the management of The United Western Bank Ltd. and their workmen, received by the Central Government on 29/11/2013.

[No. L-12012/177/2002-IR (B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, KOLHAPUR

#### Reference (IT) No. 3 to 6 of 2002

#### Reference (IT) No. 3 of 2002

The United Western Bank Ltd.,  
Raviwar Peth, Satara,  
Thru. Its General Manager,  
Industrial Development Bank of India,  
WTC Complex, Cuff Parade, Mumbai. ...First Party  
And

Shri Ravindra Raghunath Ashtekar,  
2804, A Ward, Sarnaik Wada,  
Kolhapur.

...Second Party

#### Reference (IT) No. 4 of 2002

The United Western Bank Ltd.,  
Raviwar Peth, Satara,  
Thru. Its General Manager,  
Industrial Development Bank of India,  
WTC Complex, Cuff Parade, Mumbai. ...First Party  
And

Shri Mahesh Prabhakar Bavadekar,  
2931, A Ward, Mahadwar Road,  
Kolhapur.

...Second Party

#### Reference (IT) No. 5 of 2002

The United Western Bank Ltd.,  
Raviwar Peth, Satara,  
Thru. Its General Manager,  
Industrial Development Bank of India,  
WTC Complex, Cuff Parade, Mumbai. ...First Party  
And

Shri. Mukund Ganesh Kulkarni  
2663, A Ward, Diwan Bol,  
Kolhapur.

...Second Party

#### Reference (IT) No. 6 of 2002

The United Western Bank Ltd.,  
Raviwar Peth, Satara  
Thru. Its General Manager,  
Industrial Development Bank of India,  
WTC Complex, Cuff Parade, Mumbai. ...First Party  
And

Shri Prakash Baburao Pawar  
23/1, Lay out No. 3, Baba Jarag Nagar,  
Kolhapur.

...Second Party

#### CORAM: SHRI K.R. PETHKAR, PRESIDING OFFICER

**Appearances:** Shri S.R. Rane, advocate for the First Party.  
Shri D.N. Patil, advocate for the Second  
Party workers.

#### COMMON JUDGMENT

(24.04.2013)

1. Central Government by orders dated 27.08.2002 in exercise of powers conferred under clause(d) of Sub-section (1) and Sub-Section (2A) of Section 10 of Industrial Disputes Act, 1947 referred these disputes between the above named parties for adjudication to this Tribunal in respect of the action of the management of



First Party in terminating/discontinuing the services of concerned Second Party Workers.

The facts in brief are that,

2. The Second Party workers were serving with the First Party since the dates mentioned as Pigmy Deposit Collectors with clean and meritorious service record. It is alleged by the Second Party workers that their services were terminated by the First Party without following procedure laid down under the Industrial Disputes Act, 1947 *w.e.f.* 14.08.1996. Therefore, the Second Party workers raised dispute before Assistant Commissioner of Labour (Central) Pune, and after recording its failure, the Central Government referred these four references for adjudication.

3. The First Party workers alleged that being appointed as Pigmy Deposit Collectors, there was employee-employer relationship between the First Party and the concerned Second Party workers. It is alleged by the Second Party workers that the branch manager of First Party illegally and improperly terminated the services of the Second Party workers *w.e.f.* 14.08.1996. The Second Party workers alleged that they approached the concerned branch managers time to time for reinstatement. They also alleged that they were continuously ventilating their grievances. As their requests were not considered by the First Party, they sent demand notices u/s. 2-A of Industrial Disputes Act, 1947 on 08.10.2001. The Second Party workers submitted its statement of justification on 23.10.2001 along with request letter for intervention to Conciliation Authority under the Industrial Disputes Act, 1947.

4. The Second Party alleged that they had worked for more than 240 days continuously in every year. However, to deprive them from legal status and benefits, First Party continued them on the bond as Pigmy Deposit Collectors. The Second Party alleged that the work performed by them is of perennial in nature. The Second Party workers alleged that the First Party has not paid wages on par with other employees nor given benefits.

5. It is alleged that while terminating the services of the Second Party workers the First Party has not followed proper procedure under the Industrial Disputes Act, 1947. As Pigmy Deposit Collectors they used to collect the deposits from the customers and fill in various registers. Lastly the Second Party workers alleged to allow the reference holding, the termination effected is illegal, improper and bad in law. Therefore, the Second Party prayed to declare the termination effected by First Party *w.e.f.* 14.08.1996 as illegal and improper and bad in law with a direction to reinstate the Second Party workers with full back wages.

6. The First Party by its written statement *vide* Exh. C-7 denied all the material allegations made against it by the Second Party workers. It is contended by the First

Party that reference is misconceived, baseless and untenable. The First Party alleged that the Second Party workers are not workmen within the meaning of section 2(s) of Industrial Disputes Act, 1947. The First Party disputed the relationship of employer and employee between the parties.

7. The First Party submitted that the reference is at belated stage and the approach of the of the Second Party workers is casual and careless. The First Party alleged that there is delay of 5 years and 2 months in raising dispute. The First Party alleged that it is engaged in the business of banking and Second Party workers were collecting deposits on commission basis. The First Party was not having control over the working hours of Second Party workers. The Madhu Sanchay Deposit scheme became unremunerative and uneconomical. Therefore the First Party terminated the scheme *w.e.f.* 14.08.1996. This termination of agreement is misinterpreted by the Second Party workers as termination of their services. Hence, in this background, First Party prayed for rejection of reference with costs.

8. In this background of facts, following issues were framed at Exh. 0-3 to which I record my findings as under.

ISSUES	FINDINGS
1. Whether the Second Party proves that they were workmen of First Party ?	In the affirmative.
2. Whether the Second Party proves that they were illegally terminated from the services by First Party ?	In the affirmative.
3. Whether the Second Party is entitled for reliefs claimed in the statement of claim ?	Partly in affirmative.
3(a) Whether the First Party proves that there is inordinate delay in raising the dispute?	In the negative.
4. What Award ?	As per final order.

## REASONS

9. The Second Party has examined Shri. Ravindra Raghunath Ashtekar at Exh. U-11. The First Party has examined its Assistant General Manager, Shri Anil Kumar Vilas Kadre at Exh. C-24. The parties are relying on the documents which they have produced on record.

## ISSUE No. 1

10. The learned advocate for the First Party has submitted that Second Party workers have not pleaded nature of duties performed by them. He has submitted that the oral evidence which the Second Party workers have led is without pleadings and the same cannot be

considered. He has submitted that the Second Party workers were not under the control of the First Party. He has submitted that the authority of Hon'ble Supreme Court in Indian Banks Association is not helpful to the Second Party workers as in para 4 of the said authority, the Hon'ble Supreme Court has not laid down the law that pigmy agent is a workman as per Industrial Disputes Act, 1947. He has submitted from the para 24 of the said authority it can be seen that evidence had come before the Tribunal that the deposit collectors are workmen within the meaning of Industrial Disputes Act, 1947. He has submitted that the Second Party workers were not workmen as the working hours of the Second Party workers were not fixed and they used to collect the pigmy deposits from the customers as per their wish. He has submitted that they used to decide as to from which pigmy account holder they would first collect the Pigmy amount. He has submitted that the Second Party workers used to collect pigmy deposit from the pigmy account holders after banking hours. He has submitted that Bank used to give commission to the Second Party workers on the basis of pigmy deposits which they have collected during the concerned period. He has submitted that the commission amount which the Second Party workers used to receive in every month used to differ month to month because of variance in collection of pigmy deposits by the Second Party workers.

The learned advocate relied on unreported decision of Hon'ble Karnataka High Court in case of Syndicate Bank V/s. Vasanth Gururao Kusanur in Writ Petition No. 7057 of 2006. In the said authority, the Hon'ble Karnataka High Court has followed the authority of Hon'ble Supreme Court in Indian Bank's Association (Supra). Indirectly the First Party is admitting that the Second Party workers are workmen as per the provisions of Industrial Disputes Act, 1947.

In the authority of Indian Bank's Association (Supra) the Hon'ble Apex Court observed that, "We also accept the submission that the banks have no control over the deposit collectors. Undoubtedly the deposit collectors are free to regulate their own hours of work, but that is because of the nature of the work itself. It would be impossible to fix working hours for such deposit collectors because they have to go to various depositors. This would have to be done at the convenience of the depositors and at such times as required by the depositors. If this is so, then no time can be fixed for such work. However, there is control in as much as the deposit collectors have to bring the collections and deposit the same in the banks by the very next day. They have then to fill in various forms, accounts, registers and passbooks. They also have to do such other clerical work as the Bank may direct. They are, therefore, accountable to the Bank and under the control of the Bank.

We also see no force in the contention that Section 10 of the Banking Regulation Act prevents employment of persons on commission basis. The proviso to section 10 makes it clear that commission can be paid to persons who are not in regular employment undoubtedly, the deposit collectors are not regular employees of the Bank. But they, nevertheless, are workers within the meaning of the term as defined in the Industrial Disputes Act. There is clearly a relationship of master and servant between the deposit collectors and the Bank concerned."

Moreover, in reference strict rules of the Civil Procedure Code and Indian Evidence Act are not applicable. In the Statement of claim the Second Party workers have pleaded that they were appointed through branch managers as pigmy deposit collectors and they have worked under the kind control of the First Party as well as kind control of the branch manager. They have pleaded that their duty was to collect maximum deposit from the pigmy account holders. In the examination in chief at para 4 and 5, the Second Party workers have stated nature of duties performed by them.

11. Learned Advocate for the First Party has submitted that the Second Party workers have entered into agreements and as per the terms and conditions laid down in the agreements, the Second Party workers were only authorised to collect deposit under Madhu Sanchay Scheme. He has submitted that as per the agreement, there was relationship of principal and agent between the parties. He further submitted that the Second Party workers were appointed only to collect deposits under the Madhu Sanchay Scheme. They were not having any involvement in any other activities of the First Party. He has submitted that Madhu Sanchay Scheme became unremunerative and uneconomical. He has submitted that the First Party decided to terminate scheme and accordingly the First Party terminated the scheme *w.e.f.* 14.08.1996. He has submitted that as a result of termination of the scheme, the said agreement did not survive and came to an end. He has submitted that the relationship of Principal and Agent between First Party and Second Party came to an end on 14.08.1996 as on the same day the Madhu Sanchay Scheme came to an end.

In the Cross examination, the Second Party workers at Exh. U-11 have admitted that when they started working as pigmy agents, at that time, the Bank has entered into an agreement/contract with them. They have further admitted that as per the agreement they had worked till 13.08.1996 as pigmy agents. They also admitted that they used to collect pigmy deposits under the Madhu Sanchay Scheme and the Bank had closed the scheme on 14.08.1996. They have further admitted that except working for Madhu Sanchay Scheme, they were not doing any work of United Western Bank.

In the cross examination at Exh. C-24, Shri Anil Kumar Kadre has admitted that like Madhu Sanchay Scheme at that time there were many other schemes functioning in the First Party. He was unable to state as to whether the Second Party workers have demanded the work of collection of deposits in other schemes from the First Party on 14.08.1996, and the same was not given. The admissions given by the Second Party workers are not helpful to the First Party as the First Party has failed to produce on record the original agreements or the copy of the agreements which were executed between the parties. It is not the case of the First Party that in the agreement there is clause that if the Madhu Sanchay Scheme automatically comes to an end, the agreement will also automatically come to an end. The First Party has not produced documentary evidence on record to show that the Madhu Sanchay Scheme had become unremunerative and uneconomical. It is not the case of the First Party that due to the said scheme, the First Party has sustained loss. It is not the case of the First Party that the customers of the said scheme had reduced. Only on the basis of admission given by Second Party workers one cannot come to the conclusion that contract/agreement was only for Madhu Sanchay Scheme. The important document *i.e.* contract/agreement is not brought before the Tribunal for the reason best known to the First Party. It is not the case of the First Party that it has destroyed the contract/agreement executed between the First Party and the Second Party workers. The First Party has not given any notice or order to Second Party workers on 14.08.1996 that as per the agreement/contract, the relationship of principal and agent between the parties have come to an end. Considering the admissions given by the Assistant General Manager of the first Party as at that time many other schemes were functioning like Madhu Sanchay Scheme, one cannot say that there was no work available with the First Party after closure of the Madhu Sanchay Scheme. The First Party being a Banking Industry, it cannot be said that there was no work available for pigmy agents to collect deposits from the customers.

From the above discussion and as per the ratio laid down by Hon'ble Supreme Court in **Indian Bank's Association (Supra)**, I come to the conclusion that the Second Party workers are workers and there was relationship of employer and employee between the parties. Hence, I answer Issue No. 1 in the affirmative.

### ISSUE No. 3-A

12. The learned advocate for the First Party submitted that Second Party workers were not at all espousing the alleged cause of action which arose after alleged termination of the Second Party workers. He has submitted that the Second Party workers were waiting and watching for the decision of Hon'ble Supreme Court in **Indian Bank's Association (Supra)**. He has submitted that the Second Party workers were/are not permitted to enjoy

the fruits which came from the decision of **Indian Bank's Association (Supra)**. He has submitted that the Second Party workers have not explained delay in raising their disputes in the statement of claims. He submitted that there is delay of five years and two months in raising disputes and same is not explained. He submitted that the Second Party workers came to know about the decision of **Indian Bank's Association (Supra)** and thereafter Second Party workers raised the dispute before the First Party. He has submitted that when the Second Party workers for the first time has raised the dispute, at that time, dispute had become stale and same was not in existence.

In support of his submissions, he has relied upon the decision in case of **Bhoop Singh V/s. Union of India reported in 1993 I L.L.J 260 (S.C.)** The Hon'ble Supreme Court has observed that "It is expected of a Government servant who has a legitimate claim to approach the Court for the relief within a reasonable period, assuming no fixed prayer of limitation applies.

The Hon'ble Supreme Court further observed that, "This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty two years, without any cogent explanation for the inordinate delay, merely because other similarly dismissed had been reinstated as a result of their earlier petitions being allowed."

In that matter, the Delhi Armed Police participated in a mass agitation on April 14, 1967. The services of the agitating police constables were terminated on that account without specifying that reason for the termination. The dismissed constables who were not taken back in service filed Writ Petitions in Delhi High Court in 1969 and 1970 which were allowed by Delhi High Court. Subsequently, some other constables also filed Writ Petitions in Delhi High Court which too were allowed. Another set of similarly dismissed constables then filed Writ Petitions in the Delhi High Court challenging the termination of their services contending that their claim was identical with that of the Petitioners in the Writ Petitions filed in 1978. These Writ Petitions were transferred to Central Administrative Tribunal which held granted the same relief as was granted to the Petitioners in the Writ Petitions filed in the High Court in 1978. The Delhi Administration preferred appeals in Hon'ble Supreme Court against the decision. Those appeals were dismissed.

The petitioner Bhoop Singh was terminated on 03.08.1967 and he had filed O.A. No. 753 of 1989 in the Central Administrative Tribunal praying for reinstatement in service and all consequential benefits on the ground that his case is similar to that of the Police Constables who had succeeded in the earlier rounds of litigation. The Tribunal had rejected the Petitioner's application on the ground that it is highly belated and there is no cogent



explanation for the inordinate delay of twenty two years in filing the application on March 13, 1989 after termination of the Petitioner's service in 1967.

In the matter before Hon'ble Supreme Court, the Petitioner had knowledge that colleagues were reinstated in the years 1969 and 1970. After knowing fully well the Petitioner had kept quiet for twenty two years. In that matter, the Petitioner knew in the year 1969 as to what was the remedy available to him. In the present matter the Second Party workers had no knowledge that they come under the definition of workman. After having knowledge about their right they had raised dispute.

The Second Party workers are not Government servants. The First Party is a Banking industry and Second Party workers are workmen. The Second Party workers have immediately raised dispute after 5 years and 2 months. The reason behind the delay to raise the dispute is that Second Party workers waited for the decision of Hon'ble Supreme Court. The delay of 5 years and 2 months cannot be called as inordinate delay. No Court has defined as to how to calculate and how to consider reasonable period for raising a dispute. The reasonable period depends upon case to case.

Hence, with due respect to the Hon'ble Supreme Court, the said authority is not helpful to First Party.

13. The learned advocate for the First Party has relied upon the authority in case of **S.S. Rathore V/s. State of Madhya Pradesh reported in 1990 I LAB.I.C. 398**. In this matter the Hon'ble Supreme Court observed that, "We are also of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made though the remedy has been availed of a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle".

The Hon'ble Supreme Court further observed that, It is appropriate to notice the provision regarding limitation under S. 21 of the Administrative Tribunal Act. Sub-Section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government Servants are concerned. Article 58 may not be invocable in view of the special limitation. Yet, suits outside the

purview of the Administrative Tribunal Act shall continue to be governed by Article 58.

In the matter before Hon'ble Supreme Court the plaintiff was a Government Servant of Madhya Pradesh and he was dismissed from services by the Collector on 13.01.1966. He preferred an appeal to the Divisional Commissioner and that appeal was dismissed on 31.08.1966. The order of dismissal of the appeal was communicated to the plaintiff on 19.09.1966. The plaintiff gave notice under Section 80 of the Code of Civil Procedure on 17.06.1969 and filed his suit on 30th September, 1989, asking for a declaration that the order of dismissal was inoperative and he continued to be in service. The Suit which was filed by the plaintiff was dismissed in the Court below on acceptance of the defence plea that plaintiff had not filed suit within three years from the date when the cause of action first arose, as required under Art. 58 of the First Schedule of the Limitation Act, 1963.

With due respect to the Hon'ble Supreme Court, the said decision is not helpful to the first party as the provisions of Limitation Act are not applicable to the Reference under the Industrial Disputes Act, 1947. Moreover the said ratio is laid down with respect to suits outside the purview of the Administrative Tribunals Act not with respect to Reference.

14. The learned advocate for the First Party has relied upon the unreported authority of Hon'ble Karnataka High Court in case of **Syndicate Bank V/s. Vasanth Gururao Kusanur in Writ Petition No. 7057 of 2006**. While deciding the Writ Petition the Hon'ble Karnataka High Court has followed the ratio laid down by Hon'ble Supreme Court in case of

- (I) 2000 SCC (L & S) 283—Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and others.
- (II) (2006) 5 SCC 433 U.P. State Road Transport Corporation Vs. Babu Ram.
- (III) 2007 AIR SCW 2882 - Dharappa Vs. Bijapur Cooperative Milk Producers Societies Union Ltd.

In the matter before the Hon'ble Karnataka High Court the Respondent was terminated on 26.08.1991 and he has raised the dispute on 12.12.2001. The case of the Bank was that by the time the Respondent had raised the dispute, it had become stale and did not exist between the parties.

**(I) 2000 SCC (L & S) 283 — Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and others.**

In the matter before Hon'ble Supreme Court the Respondent had admitted that he had committed misappropriation, expressed unconditional regret and prayed the punishment of dismissal be not imposed on



him. The Respondent was dismissed from the services from 11 August, 1972. He filed appeal before the Board of Directors of Bank. His appeal was dismissed by order dated 3.10.1973. He got whatever benefits were due to him under the rules framed by the Bank. Then, after a period of seven years he served a notice on the Bank contending that he was discriminated as two other employees of the Bank under same situation were reinstated in the service of the Bank. The Respondent had started to raise the dispute before appropriate forum. The Respondent moved application before Assistant Commissioner of Labour of the Central Government for the relief. The Assistant Commissioner of Labour held that there was no scope for formal proceeding. The Respondent filed Writ Petition. The Hon'ble High Court directed the Assistant Commissioner of Labour to submit its report u/s. 4(2) of the Act. The same was sent to the Hon'ble High Court. The Central Government declined to make reference u/s. 10 of the Act. The Respondent again filed Writ Petition in Hon'ble High Court, which was disposed of with a direction to the Central Government to reexamine the matter against which the Bank came before the Hon'ble Supreme Court.

**(II) (2006) 5 SCC 433 U.P. State Road Transport Corporation Vs. Babu Ram.**

The Respondent and others were terminated from the service in the year 1983. The Dy. Labour Commissioner referred the dispute by its order dated 29.8.1998. The Respondent had raised the claim after 15 years. The Hon'ble Supreme Court had followed the ratio laid down in Nedungadi bank Ltd. (Supra).

**(III) 2007 AIR SCW 2882 — Dharappa Vs. Bijapur Cooperative Milk Producers Societies Union Ltd.**

Section 10(4A) provides an alternative procedure to seek redressal in regard to an order of termination, by making an application directly to the Labour Court, within six months from the date of communication of the order of termination, without the intervention or assistance of an employees union and without having to approach the appropriate Government for making a reference. Such a provision cannot be interpreted as reviving stale and dead claims nor as enabling a workman to seek remedy beyond six months from the date of communication, except to the extent expressly provided for. The true and proper interpretation of Section 10(4A) is that an individual workman can apply to the Labour Court for adjudication of the dispute relating to an order of discharge/dismissal/retrenchment/termination within six months from the date of communication to him, of such order of termination.

In that matter the appellant was terminated with effect from 01.03.1980. He made an application under Section 10(4A) of Industrial Disputes Act, 1947 on 04.10.1988 before Labour Court, Hubli for declaration that his termination be declared as null and void. In Industrial

Disputes Act there is Karnataka Amendment to Section 10 by way of insertion of sub-section (4A) with effect from 07.04.1988. The said sub-section states that workman should directly approach the Labour Court within six months from the date of communication of the order.

With due respect to the Hon'ble Supreme Court and Hon'ble Karnataka High Court the said authorities are not helpful to First Party. The First Party has not challenged the order of reference passed on 27.08.2002. The First Party is now estopped from raising the contention that Second Party workers were not diligent in taking action when the alleged cause of action for the dispute arose when the Second Party workers were allegedly terminated on 29.8.1996. The First Party has not specifically pleaded in its written statement that the dispute had become stale and the same did not exist when the Second Party workers have sent approach notice on 08.10.2001 to the First Party. The First Party has not produced on record a copy of reply to show that it had given reply to the approach notice of the Second Party workers. Nor it is the case of the First Party that it had given reply to the approach notices of the Second Party workers. The Second Party workers have not received any compensation amount from the First Party. The First Party has not stated and made clear in its written statement as to whether it had given reply to the statement of justification before Conciliation Authority. There is no material on record to come to the conclusion that the First Party has stated before the Conciliation Authority that the Second Party workers were not diligent in espousing the alleged cause of action and the dispute had become stale and same is not existence. The Second Party workers have produced on record the approach notice dated 08.11.2001, which shows that they have raised dispute within a reasonable time, after the decision of Hon'ble Supreme Court in **Indian Bank's Association (Supra)**. The provisions of Limitation Act are not applicable to the present references which are referred to this Tribunal under the provisions of the Industrial Disputes Act, 1947. Delay in raising dispute and dispute becoming stale or coming to an end are two different issues to each other. Delay in raising dispute means that dispute was in existence it was raised. The defence raised by First Party is devoid of merit as the First Party has not proved as to what prejudice was caused to it due to delay in raising dispute. The plea of delay which is raised by First Party is required to be proved by showing real prejudice caused to it and not by real hypothetical. The Second Party workers were terminated all of a sudden on one fine day morning without giving any intimation to them. The Second Party workers are the pigmy agents. Their income was not fixed. In these circumstances whether it was expected from them to raise their dispute immediately against the First Party or first they should make arrangement for their family's survival.

15. In the decision of Hon'ble Supreme Court in case of **Ajaib Singh V/s. Sirhind Co.-Op. Marketing Cum Processing Service Society Ltd. and Anr. reported in 1999 I CLR 1068**, it is observed that the, Industrial Disputes Act, 1947 - S. 10 - Limitation Act, 1983 - Art. 137 - Applicability to Industrial Disputes Act, 1947 - Appellant was dismissed from service on 16.07.1974 - He raised demand on 08.12.1981 - In consequent reference to Labour Court, Respondent approached High Court mainly on the ground of delay in claiming reference - Respondent having succeeded in High Court on the ground that the appellant had slept over for years in raising demand, this appeal is filed - Supreme Court after taking into consideration the objectives in enacting Industrial Disputes Act, 1947, the case law and the fact that Limitation Act is not made applicable to the Industrial Disputes Act, 1947, held that relief under the Act cannot be denied to the workman merely on the ground of delay as Limitation Act is not applicable and in case delay is established, the Labour Court or Tribunal can mould relief as to back wages etc.

16. In the authority of Hon'ble Supreme Court in case of **Kuldeep Singh V. G.M. Instrument Design Development and facilities Center and Anr. reported in 2011 I CLR 5**, observed that though the law does not prescribe any time limit for appropriate Government to exercise its power u/s. 10 of Industrial Disputes Act, 1947, the said power is to be exercised reasonably and in a rationale manner.

From the above discussion, I come to the conclusion that first Party has not proved that there is inordinate delay on the part of Second Party workers to raise dispute before the first party. The delay of 5 years and 2 months caused by Second Party workers to raise the dispute is not an unreasonable delay. Moreover, in view of the ratio laid down by Hon'ble Supreme Court in **Ajaib Singh V/s. Sirhind Co.-Op. Marketing Cum Processing Service Society Ltd. and Anr. reported in 1999 I CLR 1068** and **Kuldeep Singh V. G.M. Instrument Design Development and facilities Center and Anr. reported in 2011 I CLR 5**, the Tribunal cannot reject the relief in favour of Second Party workers, if they prove illegal termination. Hence, I answer Issue No. 3-A in the Negative.

#### Issue No. 2

17. Undisputedly, the Second Party workers started to work as pigmy agents in Mahadwara Road Branch of First Party from 12.12.1991 onwards till 14.08.1996. In the evidence at Exh. U-11, the Second Party workers have deposed that they have worked and rendered more than 240 days service in every year. The witness of First Party Shri Anilkumar Kadare in his cross-examination at Exh. C-24 has admitted that the record of collection of deposits and record to be maintained by Second Party workers of deposits is available in Mahadwar Branch of United

Western Bank. He further admitted that the Second Party workers used to work on an average 26 days in a month and record of their working is in Mahadwar Branch. He has also admitted that from 1996 onwards the Second Party workers were working with the First Party and on 14.08.1996 the Bank had stopped to give work of Madhu Sanchay Scheme to Second Party workers. In these circumstances, there was no difficulty for the Bank to produce on record the documents in respect of Second Party workers about collection of deposits and the payment/commission which was made by the First Party to the Second Party workers towards their collection and the number of days they have worked. In the cross-examination, the witness of First Party has avoided to give answers as to whether the Bank had given any written notice to the Second Party workers while stopping work of Second Party workers. he has avoided to give answer whether the First Party Bank had given compensation amount, notice pay in lieu of notice after 14.08.1996. He has admitted that from 14.08.1996 except Madhu Sanchay Scheme other schemes were in existence in the Bank. In the cross-examination Second Party had given suggestion to the said witness that the workers had demanded work of collection of deposit in other scheme the same was not given.

The statement of justification which is given by the Second Party workers to the Assistant Commissioner of Labour on 28.10.2001 at Exh. U. 18, which also states that they have worked for more than 240 days in every year. The Second Party workers were collecting pigmy amount from the pigmy account holders till 13.08.1996. From this fact inference can be drawn that the Second Party workers have continuously worked for more than 240 days during a period of preceding 12 months from 13.08.1996. I do not see any reason to disbelieve the evidence of the Second Party workers on the fact that they had continuously worked for more than 240 days during a period of preceding 12 calendar months from 13.08.1996.

From the above evidence, it is clear that First Party Bank had not followed the procedure prescribed under 25-F, G and H of the Industrial Disputes Act, 1947 nor it followed due process of law while not allowing the Second Party workers to work, which amounts to illegal termination. Hence, I answer Issue No. 2 in the affirmative.

#### Issue No. 3

18. For the sake of arguments let us consider that the First Party had retrenched the Second Party workers as the Madhu sanchay scheme was closed and no work of collection of deposits was available with the First Party. In that case, it was necessary for the First Party follow the provisions of section 25-F, G and H of the Industrial Disputes Act, 1947 at the time of retrenchment of Second Party workers. On the contrary, the First Party neither in its written statement alleged that it has retrenched the

Second Party workers nor in its evidence it has anywhere stated that the Second Party workers were retrenched by it by following procedure laid down in sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. It is not the case of the First Party that it has issued retrenchment notice, or displayed seniority list etc. while putting an end to the services of the First Party.

19. The Second Party workers have stated that they had worked for more than 240 days continuously in every year. They have stated that in every year they had rendered more than 240 days continuous service. Undisputedly, the First Party did not allow the Second Party workers to work from 14.8.1996 onwards. Therefore, it was obligatory on the party of the First Party to follow due process of law while putting an end to the service of the Second Party workers.

From the above discussion it has become abundantly clear that the First Party had orally terminated the Second Party workers on 14.8.1996 without following due process of law. The Second Party workers had given the approach notice to First Party on 08.10.2001 and had given statement of justification to the Assistant Commissioner of Labour of Central Government on 23.10.2001. The Assistant Commissioner of Labour had referred the reference to this Tribunal by passing the order dated 27.8.2002. The Second Party workers have not brought on record the amount of commission which they used to receive from the First Party. They have not brought on record any evidence on the point as to whether they remained unemployed after 14.08.1996. Both the parties have taken the references very lightly. The age of the Second Party workers is above 58 years. It will not be proper to give relief of reinstatement to the Second Party workers after a period of 17 years. In these circumstances, it is necessary to mould the relief of reinstatement and back wages by way of giving compensation. Hence, I answer Issue No. 3 accordingly and proceed to answer the reference partly in affirmative.

#### AWARD

- (I) Reference is answered partly in affirmative.
- (II) Each of the Second Party worker in Reference (IT) Nos. 3 to 6 of 2002 is entitled to an amount of compensation of Rs. 50,000/- each in lieu of reinstatement and back wages.
- (III) Award be drawn accordingly.
- (IV) Copy of Award be kept in Reference (IT) Nos. 4 to 6 of 2002.

Place: Kolhapur.

Date: 24.04.2013.

K.R. PETHKAR, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2013

**का.आ. 2654.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 218/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[संख्या एल-12012/59/98-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2654.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 218/98) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore, and their workmen, received by the Central Government on 29/11/2013.

[No. L-12012/59/98-IR (B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

**NO. CGIT/LC/R/218/98**

PRESIDING OFFICER: SHRI R.B. PATLE

General Secretary,

Daily Wages Bank Employees Association,

9, Sanwer Road,

Ujjain

....Workman/Union

Versus

Managing Director,

State Bank of Indore,

State Bank of India (after merger),

Head Office, 5, Y.N. Road,

Indore

....Management

#### AWARD

Passed on this 24th day of October 2013

1. As per letter dated 23-9-1998 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/59/98-IR(B-I). The dispute under reference relates to:

"Whether the action of management of Managing Director, State Bank of Indore (State Bank of India



after merger) in terminating the services of Shri Kamal Kishore Sharma w.e.f. 15-7-97 not regularizing him is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Statement of claim is submitted by Daily Wage Bank Employees union on behalf of the Ist party workman rather it doesnot bear signature of the workman. The case of Ist party workman is that he was engaged on 1-6-92 on daily wages by Branch Manager of Nalkheda Branch of State Bank of Indore. That he was required to work from 8 AM to 10 AM, 10.30 AM to 6 PM. He was working with devotion. He was paid wages for 6 days in a week. He was required to work more than 8 hours a day. His services were discontinued from 15-7-97 without notice. He was not paid retrenchment compensation. Other employees were engaged after termination of his services. He was not called for employment. He had completed 240 days continuous service during each of the year. He is covered as workman under Section 25 B of I.D. Act. His services are terminated in violation of Section 25-F, G, H of I.D. Act. para 507, 524 of Sastry Award, Section 33 of I.D. Act. On such ground, he prays for his reinstatement with consequential benefits.

3. IInd party filed Written Statement at page 9/1 to 9/7, IInd party submits that the statement of claim filed by Shri Ram Nagwanshi is not legal. Though claim is filed by Union authorizing Secretary for filing statement of claim. The Union of Ujjain district is not competent to raise dispute of the Ist party workman working at Nalkheda, Distt Shajapur. That order or reference is not sent to the State Bank of Indore. General manager of State bank of Indore is implemented as party. The matter suffers from misjoinder of parties.

4. IInd party denied that Ist party workman was working on daily wages from 1-6-92. It is denied that he was working udner Branch Manager. It is denied that workman was required to work more than 8 hours or his services are discontinued without notice. Violation of Section 25-F, G & H, 33 of I.D. Act is denied. It is denied that his services are discontinued in violation of Section 33 of I.D. Act. That any employee in Bank cannot be appointed without following selection process. Workman was paid wages for his working days. He is not covered as workman under Section 25 (B) of I.D. Act. IInd party prayed for rejection of claim of workman.

5. Ist party Union filed rejoinder at Page 13, 14 reiterating its contention that workman completed 240 days continuous service during 1992 to 1997. The workman was paid bonus from 1992 to 1997. He was also paid amount of gratuity. That he was working against vacant post.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- |   |                                       |
|---|---------------------------------------|
| (i) Whether the action of management of Managing Director, State Bank of Indore (State Bank of India after merger) in terminating the services of Shri Kamal Kishore Sharma w.e.f. 15-7-97 not regularizing him is legal? | In affirmative                        |
| (ii) If not, what relief the workman is entitled to?"   | Relief prayed by workman is rejected. |

### REASONS

7. As per terms of reference, legality of termination of service of workman is challenged. However statement of claim is signed only by Secretary of Union. It doesnot bear signature of Ist party workman. The contentions of Ist party workman are denied in Written Statement filed by the management. Workman filed affidavit of his evidence contending that he was working on daily wages from June 1992. he was working continuously for more than 240 days. During each of the year, he was paid bonus. His services are terminated without notice from 15-7-97. Workman declined to appear for his cross-examination as per ordersheet dated 19-4-2011. The management filed affidavit of evidence of Shri Subhash Panchal supporting contention of the management. However in his cross-examination, management's witness says during relevant period he was not working in the Branch. That he tried to get information from the Branch Manager but he couldnot met them. That he has not seen the document submitted alongwith statement of claim. That from information received from Sujal Meena he has stated about working times of the workman in Para-6. The management's witness has no personal knowledge neither, he has produced any documents. He received information about the matter. In his further cross-examination, he says that as Ist party workman was not employee of the Bank, he was not served with notice, retrenchment compensation was not paid.

8. As workman has not appeared for his cross-examination in ordersheet dated 19-4-2011, it was observed that his evidence will not be looked into. Thus the claim of Ist party workman is not supported by evidence. Documents Exhibit W-1 is issued by General Manager Operations. That temporary employees engaged on daily wages paid weekly or monetary wages creates problems such appointment should be avoided. Said



document doesnot support claim of workman that he was working for more than that he was working for more than 240 days preceding his termination. As such the workman is not covered under Section 25(b) of I.D. Act. Therefore he is not entitled to protection under Section 25-F of I.D. Act. There is no evidence to hold that termination of services of workman is violative of Section 25-F. Learned counsel for IInd party Mr. Shrotri relies on ratio held in

"Case of ONGC Ltd. and another versus Shyamal Chandra Bhowmik reported in 2006(1) Supreme Court Caes 337. Their Lordship held requirement of 240 days continuous service, onus to prove the same lies on workman. It is held that question only when evidence is led."

In case of R.M. Yellatti versus Asstt. Executive Engineer reported in 2006(1) Supreme Court cases 106. Their Lordship held requirement of 240 days continuous service burden of proof lies on workman. It is for workman to adduce cogent evidence, both oral and documentary. Mere affidavits or self serving statements made by workman will not suffice. Evidence Act not applicable to proceedings under Section 10 of I.D. Act.

Considering ratio in both the cases and evidence discussed above, termination of services of Ist party workman cannot be said illegal. Therefore I record my finding in Point No. 1 in Affirmative.

9. In the result, award is passed as under:—

- (1) Action of management of Managing Director, State Bank of Indore (State Bank of India after merger) in terminating the services of Shri Kamal Kishor Sharma w.e.f. 15-7-97 not regularizing him is proper.
- (2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2013

**का.आ. 2655.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 133/2003) को प्रकाशित करती है, जो केंद्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[सं एल-12012/49/2003-आईआर(बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2655.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref. No. 133/03) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 29/11/2013.

[No. L-12012/49/2003-IR (B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/133/03

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Ravindra Jagannath Mede,  
S/o Shri Jagannath Mede,  
Tehsil Burhanpur,  
Distt. Khandwa (MP)

...Workman

*Versus*

Asstt. General Manager,  
State Bank of India, Region-II,  
Zonal Office,  
Hamidia Road,  
Bhopal

...Management

#### AWARD

Passed on this 11th day of October, 2013

1. As per letter dated 8-8-2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/49/2003-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of Asstt. General Manager, State Bank of India, Region-II, Bhopal in terminating the services of Shri Ravindra Jagannath Mede S/o Shri Jagannath Mede w.e.f. 11-12-98 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 2/1 to 2/5. Case of workman is that he was appointed by IInd party from 29-9-99 on daily wages as dak messenger. That he worked honestly with satisfaction of his employer. He was not served with chargesheet, any kind of punishment was not imposed against him. Without justification, IInd party terminated his services from 11-12-88. That the termination of services is arbitrary, he had completed 240 days preceding his termination. That after his termination, IInd party appointed Ram Singh Raikwar, Raju Bimbarkar who were working on daily

wages like him. That IInd party shown favour making their appointment. Though he was continuously working till 10-12-2009, his services were terminated illegally. Ist party submits that four other employees working in the branches are regularized. IInd party be directed to produce record about those employees. According to Ist party, termination of his services is in violation of principles of natural justice. That Section 25-F(b) is not complied. He was not paid notice pay. He was not provided the re-employment, junior employees are retained in service, as such termination of service is illegal. On such grounds, Ist party prays for his reinstatement with consequential benefits.

3. IInd party filed Written Statement at Page 9/1 to 9/9. Claim of workman is denied. IInd party submits that workman was employed purely as daily rated contractual employee for performing duties of Hammal. That the details of his working days are shown as in 1991—66 days, in 1992—223 days, in 1993—245 days, in 1994—268 days, in 1995—277 days, in 1996—271 days, in 1997—250 days and in 1998—237 days. That Ist party employee was engaged on permanent basis as per exigency, notice is not required for termination of his service. In para-3 of the Written Statement, IInd party contents that the employee had not worked for 240 days during calendar year non-engagement. The wages of Ist party were shattered prior to his engagement. He was not in continuous service. His discontinuation is covered under Section 2(oo)(bb) of I.D. Act. His discontinuation does not amount to retrenchment in violation of Section 25-F of I.D. Act. The engagement of Hammal does not constitute service of the Bank. His services were contractual. He had not continuously worked for 240 days provided under Section 25-F of I.D. Act. However the Ist party was paid wages for notice period and retrenchment compensation Rs. 6075/- on 11-12-98. That as per provisions in various agreements, the employees were given chance for permanent employment Ist party workman was not found eligible as per the provisions in the agreement. As per the settlement interview of the discontinued employees were conducted and panel of selected candidates were prepared. The service of workman were discontinued. He was paid notice pay and retrenchment compensation amount. On such ground, IInd party submits that claim of workman be dismissed.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- |   |                |
|---|----------------|
| (i) Whether the action of the management of Asstt. General Manager, State Bank of India, Region-II, Bhopal in | In affirmative |
|---|----------------|

terminating the services of Shri Ravindra Jagannath Mede S/o Shri Jagannath Mede *w.e.f.* 11-12-98 is legal?

- |   |  |
|---|--|
| (ii) If not, what relief the workman is entitled to?" | Relief claimed by workman is rejected. |
|---|--|

### REASONS

5. Workman is challenging the termination from service for violation of Section 25-F, G of I.D. Act. All the allegation of workman are denied. The pleading in para 1 & 3 of Written Statement are inconsistent. In para-1, working days are shown more than 240 days whereas in Para-3, IInd party pleads that workman was not working for 240 days during any of the year.

6. Affidavit of evidence is filed by workman stating that he was continuously working with IInd party from 29-9-91 to 10-12-98. He was working for more than 240 days during all the years. That his services were terminated illegally. After he is terminated, other employees were appointed. The other employees are also regularized. Workman did not remain present for his cross-examination. The evidence of workman was closed on 22-10-2010 as workman not remained present for cross-examination, his evidence cannot be relied in support of his claim. Management filed affidavit of witness Shri Surendra Shah covering most of the contentions of management. That the workman was paid notice pay and compensation amount Rs. 6075/-. However, copy of notice is not produced. Management witness was not cross-examined on behalf of workman. His evidence remained unchallenged. As stated above, workman not made available for his cross-examination, his evidence cannot be relied. Considering above aspects no illegality in termination of Ist party can be established. For above reasons, I record my finding in Point No. 1 in Affirmative.

7. In the result, award is passed as under:—

- (1) Action of the management of Asstt. General Manager, State Bank of India, Region-II, Bhopal in terminating the services of Shri Ravindra Jagannath Mede S/o Shri Jagannath Mede *w.e.f.* 11-12-98 is legal.
- (2) Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2013

का.आ. 2656.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण, जबलपुर के पंचाट संदर्भ संख्या 153/2001 को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[सं एल-12012/100/2001-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2656.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 153/2001 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of The Branch Manager, State Bank of India, Ridge and their workmen received by the Central Government on 29/11/2013.

[No. L-12012/100/2001-IR(B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

**No. CGIT/LC/R/153/2001**

Presiding Officer: Shri R.B. Patle

Shri N.K. Patel,

Dy. Secretary,

State Bank of India Staff Congress (INTUC)

5/235, Pragati State Bank Staff Colony,

Vikas Nagar,

Jabalpur

...Workman/Union

*Versus*

Chief Manager,

State Bank of India,

Ranjhi Branch,

Jabalpur (MP)

...Management

#### AWARD

(Passed on this 21st day of October 2013)

1. As per letter dated 24-9-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/100/2001/IR(B-I). The dispute under reference relates to:

"Whether the action of the management of State Bank of India, Ranjhi Branch Jabalpur (MP) in terminating the services of Shri Keshav Prasad Yadav, S/o Shri Hira Lal Yadav *w.e.f.* 18-12-1998 orally while he has worked as temporary worker from November 1993 to 17-12-1998 is justified? If not, what relief he is entitled to?"

2. After receiving reference, notices were issued to the parties, Ist party workman despite of notice failed to

appear. Statement of claim is filed by workman. Reference is proceeded exparte against workman on 14-3-2011.

3. IInd party filed exparte Written Statement. IInd party has pleaded that Ist party workman was not working as temporary employee at any time during 1993 to 1998. Workman has not produced any documents. His claim is not supported by the rules or regulations to cover claim of workman.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of State Bank of India, Ranjhi Branch Jabalpur (MP) in terminating the services of Shri Keshav Prasad Yadav, S/o Shri Hira Lal Yadav *w.e.f.* 18-12-1998 orally while he has worked as temporary worker from November 1993 to 17-12-1998 is justified? In Affirmative.

(ii) If not, what relief the workman is entitled to?"

Relief prayed by workman is rejected.

#### REASONS

5. As stated above, workman has not participated in reference proceeding. He has not filed statement of claim. The reference is proceeded exparte against workman. The IInd party denied claim of workman filing Written Statement. The affidavit of management's witness Shri Sanjay Shrivastava is filed. The witness of the management has stated that workman Shri Keshav Prasad Yadav did not work in State Bank of India during the period 1993 to 1998.

6. Considering unchallenged evidence of management's witness, I find no reason to disbelieve his evidence. His claim of workman is not substantiated by oral or documentary evidence. I record my finding in Point No. 1 in Affirmative.

7. In the result, award is passed as under:—

1. Action of the management of State Bank of India, Ranjhi Branch Jabalpur (MP) in terminating the services of Shri Keshav Prasad Yadav, s/o Shri Hira Lal Yadav *w.e.f.* 18-12-1998 orally while he has worked as temporary worker from November 1993 to 17-12-1998 is legal.

2. Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2013

**का.आ. 2657.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट संदर्भ संख्या 65/2007 को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[सं. एल-12012/28/2007-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2657.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 65/2007 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore, Zonal Office, and their workmen, received by the Central Government on 29/11/2013.

[No. L-12012/28/2007-IR(B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

**NO. CGIT/LC/R/65/2007**

Presiding Officer : Sh. R.B. Patle

Shri Ishwarlal Chandrakar,  
Block 4/R, Road No. 20, Sector-6,  
Bhilai, Distt. Durg (CG),  
Durg (CG)

.....Workman

Versus

The Asstt. General Manager (V),  
State Bank of Indore,  
(State Bank of India - after merger) Zonal Office,  
National Highway, Telebandha,  
Raipur (CG)

.....Management

#### AWARD

**(Passed on this 24th day of October, 2013)**

1. As per letter dated 25.6.2007 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/28/2007-IR (B-I). The dispute under reference relates to:

"Whether the action of the management of State Bank of Indore in terminating the services of

Shri Ishwarlal Chandrakar w.e.f. 25.5.2006 is legal and justified? If not, to what relief the workman concerned is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/4. Case of Ist workman is that he was engaged on daily wages Rs. 60/- by Branch Manager Shri A.M. Saxena on 26.6.1998. That his wages were increased from Rs. 60 to 80, 90, 100. He was paid wages deleting wages for Sunday. He was continuously working more than 240 days till termination of his services from 25.5.2006. That his services were terminated without notice. He was not paid retrenchment compensation. Termination of his service is in violation of Section 25-F, G. H of I.D. Act. On such grounds, he prays for reinstatement with back wages.

3. IInd party filed Written Statement at Page 8/1 to 8/10. IInd party submits that State Bank of Indore is Banking company under State Bank of India Act, 1959. The Bank carries its place as per directions of RBI. There are recruitment rules for Class III and IV employees. Branch Manager has no power to appoint messenger, security guard. Ist party is trying to get back door entry in service of the Bank. Daily wage employee/sweeper are required to do their work before working hours of the Bank. He is required to work for two hours per day. Ist party workman was not appointed following recruitment procedure. There is no reason to regularization of his services. He cannot be absorbed as peon. That Ist party workman never worked for more than 240 days during the period 1998 to 2006. Violation of Section 25-G, F of I.D. Act is denied. It is submitted that workman is not covered under Section 25(B) of I.D. Act. On such grounds IInd party prays for rejection of the claim of workman.

4. Workman filed rejoinder at page 9/1 to 9/2. He has contented that his services are terminated without notice. Retrenchment compensation was not paid. He was required to work more than 8 hours per day. His services are terminated in violation of Section 33 of I.D. Act, he was paid bonus as per directions of ALC.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of State Bank of Indore in terminating the services of Shri Ishwarlal Chandrakar w.e.f 25.5.2006 is legal?	In Negative
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(ii) If not, what relief the workman is entitled to?"	As per final order
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**REASONS**

6. Workman is challenging termination for his services for violation of Section 25-F, G, H of I.D. Act. The material contentions of workman are denied. Workman filed affidavit of his evidence stating that he was working as peon from 26.6.1998 till 25.5.2006. His services were terminated without notice. Retrenchment compensation was not paid to him. He was working for more than 240 days during each of the year. He was paid bonus Rs. 15,566/-. His services were terminated in violation of Section 25-F, G, 33 of I.D. Act. In his cross-examination, workman says he was working in Bhilai Nagar branch. He was working under M. Saxena and other Managers. He was working on daily wages. Appointment letter was not given to him. He was not interviewed before his appointment. He has stated in his affidavit of evidence that he was continuously working for more than 240 days during all years is not challenged.

7. Management filed affidavit of evidence of Shri G.S.N. Murthy. Management's witness has denied that workman was engaged by Branch Manager, SBI, Bhilai. He also denied that the workman was working for more than 240 days during 1998 to 2006. The affidavit of witness is in the shape of denial of the contentions of the workman. Management's witness in his cross-examination says that he was not working in Bhilai. That the witness has no knowledge of the working of the workman. One post of Messenger cum Farrash was sanctioned for Bhilai branch. He was unable to tell who was working on said post. He claims ignorance whether principles of last come first go was followed. He claims ignorance about payment of retrenchment compensation, bonus amount as per order of the ALC. The witness of the management has claimed ignorance of all the material aspect asked in his cross-examination. Considering unchallenged evidence of the workman that he had worked for more than 240 days during 1998 to 2006 whereas the evidence of management's witness claims ignorance whether he was working in the Bank during the relevant period. The evidence of management's witness cannot be relief in preference of the evidence of the workman. During pendency of the reference, State Bank of Indore merged in State Bank of India. The application filed for amendment has been allowed. The documents produced on record Exhibit W-1 re issued by Asstt. General Manager admitting the Ist party workman was working on daily wages in the Bank. He was paid his wages for all the working days. Thus the evidence of workman is corroborated by document Exhibit W-1. Document Exhibit W-2 & W-3 are letter issued by ALC for payment of bonus to the workman. As per Exhibit W-4, Asstt. General Manager informed ALC that the matter of payment of bonus was taken up by higher authorities. Letter Exhibit W-5 shows that after receiving necessary administrative clearance from higher authorities. Instructions were issued to the concerend branches to pay bonus. Document Exhibit W-5 shows name of Ist party workman at Sl. No. 1. From those documents it is clear that

workman was working in Bank as daily wager, he was paid bonus. Thus the claim of Ist party workman that he was working for more than 240 days during 1998 to 2006 finds corroboration from those documents.

8. The services of workman are discontinued without notice, he was not paid retrenchment compensation. It amount to illegal retrenchment. Provisions of Section 25-F, of I.D. Act are violated. Therefore, I record my finding in Point No. 1 in Negative.

9. Point No. 2 - In view of my finding in Point No. 1 that termination of workman from service is illegal, question arises as to what relief the workman is entitled for. Workman was not appointed following recruitment rules. His name was sponsored through Employment Exchange. He was not subjected to interview. His appointment was not against sanctioned post. He was working in daily wages for about 7 years. Considering the spam of working on daily wages, the workman cannot be absorbed in service. Reinstatement with back wages cannot be granted to him. Rather the reasonable compensation would be appropriate. Considering the length of service, compensation Rs. 75,000 would be reasonable. Accordingly I record my finding in Point No. 2.

10. In the result, award is passed as under :—

- (1) Action of the management of State Bank of Indore in terminating the services of Shri Ishwarlal Chandrakar w.e.f. 25.5.2006 is proper.
- (2) IInd party is directed to pay compensation Rs. 75,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2013

**का०आ० 2658.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चंडीगढ़ के पंचाट (संदर्भ संख्या 1015/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[सं० एल-41012/117/2003-आई आर (बी-1)]  
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2658.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1015/2005) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Northern

Railway, The Sr. D.P.O., D.R.M. office, Northern Railway, Northern Railway, Hanuman Junction, and their workmen, received by the Central Government on 29/11/2013.

[No. L-41012/117/2003-IR (B-I)]  
SUMATI SAKLANI, Section Officer

### ANNEXURE

### IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

**Present :** Sri Kewal Krishan, Presiding Officer

**Case No. I.D. 1015/2005**

Registered on 17.9.2005

Shri Nasib Singh S/o Sh. Dhanna Ram, R/o Village  
Salarian Kalan, Tehsil, Mukerian, Distt. Hoshiarpur

... Petitioner

*Versus*

1. The Divisional Railway Manager, Northern Railway,  
Ferozepur

2. The General Manager, Northern Railways, Baroda  
House, New Delhi

... Respondents

### APPEARANCES

For the workman : Sh. Manohar Dadwal.

For the Management : Sh. N.K. Zakhmi Advocate.

### AWARD

**(Passed on 23.9.2013)**

Central Government *vide* Notification No. L-41012/117/2003-IR(B-I) Dated 26.4.2005, by exercising its powers under Section 10, sub-section (1) Clause (d) and sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of Northern Railway represented through Divisional Railways, Ferozepur, in terminating the services of Sh. Nasib Singh, Gangman w.e.f. 13/10/1983 not complying with the provisions of Section 25F, 25G and 25H of the ID Act, 1947 was just, legal and fair? If not, what relief the workman is entitled to and from which date?"

On receiving the reference, notices were issued to the workman as well as to the management.

The workman appeared and submitted statement of claim pleading that he was appointed as a Gangman on 16.1.1981 and in pursuance of the appointment letter he joined the service. He worked from 16.1.1981 to 13.10.1983

*i.e.* for period 399 days when his services were terminated without serving any notice on him and in violation of Section 25F of the Act.

It is further pleaded that his name was entered in the casual labourer register and in view of the instructions contained in the letter dated 14.2.1996, his name was to be considered for employment as Sanitary/Safaiwala, but he was not considered and the persons who were similarly situated as the workman namely Dharam Chand and Khazan Chand were appointed. That the persons junior to the workman were retained in service and thus the management contravened the provisions of Section 25G. Since he is entitled to be employed, he filed a civil suit which was dismissed on technical ground on 11.12.2001. That the management discontinued his services which is illegal and he is entitled to be reinstated in service with all the consequential benefits.

Management filed written reply pleading that the workman was employed as a casual labourer against the temporary arrangement for a specific period and he worked intermittently and his employment stood abolished when the work was completed. It is further pleaded that the workman himself left the job and did not report for duty. That his name was not entered in the casual labourer register and no person junior to him was appointed. That Dharam Chand and Khazan Chand worked for 1011 days and 1391 days whereas workman worked for 399 days and he was not entitled to any relief. No person junior to workman was appointed.

The workman appeared in the witness-box and filed his affidavit reiterating his case as stated in the claim petition.

Workman was proceeded ex-parte vide order dated 4.7.2011.

Thereafter the management also examined its witness.

I have heard Sh. N.K. Zakhmi counsel for the management and have gone through the record carefully.

It is the case of the workman himself that his services were terminated in the year 1983. He made the reference only in the year 2005 *i.e.* after a delay of more than 20 years and this fact alone is sufficient to decline him the relief.

According to the workman he joined his duty in pursuance of the appointment letter dated 16.1.1981 but he did not place on record said letter showing its terms and conditions. It is a definite case of the management that he was engaged on temporary basis against the specific work and his services came to an end on completion of work. In view of the specific stand taken by management, the workman was required to place on record his appointment letter and in its absence, the plea of the management has to be taken as correct that he was a casual labourer and appointed for a specific work. The appointment of casual labourer comes to an end when discontinued and in this

respect reliance may be place on **Secretary, State of Karnataka and Others Vs. Umadevi** and Others and observed that—

"Unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued."

Again it was held by the Apex Court in Himanshu Kumar Vidyarthi and others Vs. State of Bihar and others that the discontinuance of the service of a daily wager is not a retrenchment and observed in para 3 of the judgement as follows—

"Every department of the Government cannot be treated to be 'industry'. When the appointments are regulated by the statutory rules, the concept of 'industry' to that extent stands excluded. Admittedly, they were not appointed to the posts in accordance with the rules but were engaged on the basis of need of the work. They are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of 'retrenchment' therefore, cannot be stretched to such an extent as to cover these employees. The learned counsel for the petitioners seeks to contend that in the High Court, the petitioners did not contend that it is a case of retrenchment but termination of their services is arbitrary. Since they are only daily-wage employees and have no right to the posts, their disengagement is not arbitrary."

Again in Divisional Forest Officer, Rohtak Vs. Jagat Singh and Another, it was observed in Para 4 of the judgment as follows—

It may be noticed that the definition of retrenchment in Section 2(oo) of the Act is applicable to the provisions contained in Chapter VA containing Sections 25F and 25H of the Act. The termination of daily wager is not retrenchment falling within Section 2(oo)(bb) of the Act. Therefore, the workman who is a daily wager cannot be reinstated as it does not amount to retrenchment within the meaning of Sections 25F and 25G of the Act.

Thus the workman was working on casual basis and it cannot be held that he was retrenched from service and there is no violation of Section 25F.

Again there is nothing in the file that any person junior to the workman was employed by management and

as such there is no contravention of Section 25G of the Act.

Therefore it is held that the workman is not entitled to any relief and the reference is answered against him. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2013

**का.आ. 2659.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रगति ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बैंगलूर के पंचाट (संदर्भ संख्या 127/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[सं. एल-12012/53/2007-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2659.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 127/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Pragathi Grameen Bank, and their workmen, received by the Central Government on 29/11/2013.

[No. L-12012/53/2007-IR (B-I)]

SUMATI SAKLANI, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
BANGALORE**

Dated: 14th October, 2013

**Present :** Shri S.N. Navalgund,  
Presiding Officer

**C.R. No. 127/2007**

**I Party**

Sh. R. Murali Krishna (1279),  
C/o Sanjeev Kumar D. No. 202,  
2nd Floor, Dove Next Apts,  
Marathahalli Extension,  
Bangalore

**II Party**

The Chairman,  
Pragathi Grameen Bank,  
Head Office, P. B. No. 55,  
Gandhinagar,  
Bellary—583 103.

**APPEARANCES :**

I Party:

None

II Party:

Shri K. V. Krishna Murthy,  
Advocate



1. The Central Government *vide* order No. L-12012/53/2007-IR(B-I) dated 03.09.2007 in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) made this reference for adjudication with the following schedule:

#### SCHEDULE

"Whether the action of the management of Pragathi Grameena Bank, Ho: Gandhi Nagar, Ballary in imposing the penalty of dismissal from services of Sri R Murali Krishna, is legal and justified? If not, to what relief he is entitled to?"

2. On receipt of the reference while registering it in C R 127/2007 when notices were issued to both the sides, the II Party entered into appearance through K. V. Krishna Murthy, advocate, whereas I Party in spite of service of notice failed to appear and file claim statement, the II party was then called upon to file counter statement. The learned advocate appearing for the II Party filed his counter statement and also by examining the Enquiry Officer as MW 1 got exhibited Ex. M1 Ex. M-6 the detailed description of which are narrated in the annexure.

3. It is borne out from the records that the II Party while I party was serving at its Siddaragadda Branch as Cleark-cum-Cashier issued Charge Sheet alleging that when Smt. Jaganmatha handed Rs. 30,000.00 on 15.05.2004 for being credited in her SB Account No. 1733 through SB Pay in slip while receiving the said amount he made entry in her pass book but failed to account same in the books of the bank and also destroyed the challan which was prepared by him only and later on 17.05.2004 he went to the house of the account holder and scribbled the entry made by him in the pass book informing that he would return the amount tendered by her within a week and later on 20.05.2004 gave her Rs. 600.00 as interest assuring that he would return amount but failed to do so and gave a small chit acknowledging the said amount and secondly taken loan from bank customers Smt. B. Gangamma. W/o Dayanana, R/o Bellary Rs. 20,000 on 02.04.2003, Rs. 20,000, Rs. 15,000 and Rs. 10,000 on 12.06.2003, 16.09.2003 and 26.9.2003 respectively from Sri S.K. Pampanagoud S/o Basappa R/p Siddaragadda by executing promissory notes; Rs. 20,000 and Rs. 10,000 on 12.06.2003 and 26.09.2003 from Sri Virupanna S/o Sanna Veeranna R/o Siddaragadda; borrowed Rs. 50,000 from Sri M Nageshappa S/o Hanumanthappa R/o Siddaragadda on 21.05.2004 and thirdly borrowed amounts from Sri Sannakka Siddappa S/o Basappa R/o Siddaragadda a sum of Rs. 30,000; from Sri Malganda Siddabasappa S/o Sanna Siddappa R/o Siddaragadda sum of Rs. 40,000; from Sri V. Vasu Ramakrishna S/o V Sathyanarayan R/o Balajinagar Camp a sum of Rs. 11,500; from Sri P Mallikarjuna S/o P Siddabasappa R/o Siddaragadda a sum of Rs. 40,000 and Rs. 80,000 on 03.08.2000 and 03.12.2002 respectively

assuring to repay within 15 days; from Sri Virupaxagouda S/o Basavanagouda R/o Siddaragadda a sum of Rs. 50,000 each on 05.07.2003 and 04.07.2003 which acts of borrowing money from persons having official dealing with the Bank amounted to misuse of his official position and betrayal of the trust and confidence reposed in him as an employee of the Bank by the customers and are detrimental to the interest of the Bank and its customers by which he brought disrepute to the Bank.

4. Being not satisfied with his reply the Disciplinary Authority ordered for Domestic Enquiry by appointing Sh. Ananda Naik as Enquiry Officer and Sh. I M Ravindranath as Presiding Officer. The Enquiry Officer after holding preliminary hearing examined nine witnesses on behalf of the management and exhibited Pass Book of SB A/c. No. 1733 pertaining to Smt. Jaganmatha; Pay in Slip in respect of Loan A/c. No. VSL 4/04 dated 15.05.2004; letter of Smt. Jaganmatha to the Investigating Officer dated 04.06.2004; letter of Sh. M Nageshappa to the Investigating Officer dated 03.07.2004; letter addressed by Sh. Nageshappa to the General Manager, T G Bank, H O Office, Bellary dated 22.09.2004 along with copy of the Promissory Note for Rs. 50,000; letter addressed by Sh. Nageshappa addressed to Sh S B Manohar, Senior Manager, T G Bank, Bellary dated 28.08.2004; letter addressed by Sh. Nageshappa addressed to Senior Manager, IR Cell, T G Bank, Bellary dated 19.07.2004; letter addressed by Smt. B Gangamma to the Investigating Officer dated 07.06.2004 alongwith promissory note; Promissory note executed by I Party towards Smt. B Gangamma on 02.04.2003; letter addressed by Smt. G Shailaja, Clerk to the Investigation Officer dated 04.06.2004; letter of Sh. Yerriswamy to the Investigation Officer dated 08.07.2004; Investigation Proceedings of Sh. K N Kamath, Investigating Officer submitted to the The General Manager *vide* his letter dated 01.07.2004; letter addressed by the Investigating Officer to the General Manager, IR Cell, T G Bank, Bellary dated 07.06.2004; Investigating Report submitted by the Investigating Officer dated 03.07.2004; receipt issued by the Investigating Officer towards S K Pampanna for having received the original promissory note dated 10.06.2004; receipt issued by the Investigating Officer towards Aravind Virupanna for having received the original promissory note dated 10.06.2004; receipt issued by the Investigating Officer towards Nageshappa for having received the original promissory note dated 03.07.2004; letter addressed by Sh. K Narayan Kamath, Investigating Officer to the General Manager, IR Cell, Bellary dated 04.06.2004; ledger sheet in respect of SB A/c No. 1733 of Smt. Jaganmatha; copy of the promissory note executed by the CSE to S K Pampanna for Rs. 15000.00; copy of the promissory note executed by the CSE to Sh. Aravind Virupanna for sum of Rs. 20,000.00; copy of the promissory note executed by the CSE to Sh. Virupanna for sum of



Rs. 10,000.00; letter of the I party addressed to the The General Manager, T G Bank, Bellary dated 05.10.2004; letter of the I party addressed to the General Manager, T G Bank, Staff Section, Bellary dated 23.10.2004; letter addressed by the I Party to the Chairman, T G Bank, Staff Section, Bellary dated 25.02.2005; letter of the I party to the Chairman, T G Bank, Bellary dated 27.01.2005; letter addressed by the General Manager to the I Party why action should not be taken against the complaints received against him dated 24.08.2004; letter of the Manager, T G Bank, Siddaragadda Branch to the Investigating Officer dated 04.06.2004 and letter addressed by the Manager, Siddaragadda Branch, Bellary to the Staff Section, T G Bank, Bellary dated 01.06.2004 along with complaint of Smt. Jaganmatha as MEx 1 to MEx 29 after receiving written brief submitted his enquiry finding to the effect that Charge No. 1 being fully proved, Charge No. 2 being partially proved *i.e.*, the CSE has borrowed Rs. 20,000.00 from Smt. Gangamma, Rs. 15,000.00 from Sri S.K. Pompanna, Rs. 30,000.00 from Sri Virupanna, Rs. 50,000.00 from Shri Nageshappa, the customers of the bank and the change of borrowing Rs. 20,000.00 and Rs. 10,000.00 by the CSE from Sri S K Pompanna Gowd has not been proved and in respect of Charge No. 3 has been proved partially *i.e.* the CSE has borrowed money from Sri Sannakki Siddappa Rs. 30,000.00 from Sri Virupaksha Gowda Rs. 1.00 lakh the customer of the branch and the charge of borrowing of Rs. 40,000.00 from Sri Malgonala Siddabasappa, Rs. 11500.00 from Sri V. Vasu Ramakrishna and Rs. 40,000.00 and Rs. 80,000.00 from Sri P Mallikarjun is not proved being partially proved. Then the Disciplinary Authority after affording him personal hearing imposed the impugned punishment and on the appeal the same came to be upheld.

5. Since the enquiry file discloses after affording all required opportunities Enquiry Officer having concluded the enquiry and submitted his enquiry report in the absence of any grievance put forward by the I party being denied of any opportunity, I have no reason to say that I party was denied of any fair and proper opportunity to defend himself in the enquiry. Since the Enquiry Officer after recording the evidence of nine witnesses and exhibiting 29 documents on considering the same held charge No. 1 being proved and charge No. 2 and 3 partially proved he has applied his mind and arrived at that finding. In the absence of the I party demonstrating the finding being perverse for no reason, I have no reason to say that the same is perverse or the punishment imposed by the Disciplinary Authority being disproportionate to the misconduct proved. In the words the I party raising the dispute having failed to file his claim statement did not make out any case to say that the impugned action by the management being not legal and justified. Hence, I have no reason to interfere in the Domestic Enquiry conducted by the II Party against the I Party or finding of the Enquiry Officer or punishment imposed by the Disciplinary Authority and upheld by the Appellate Authority. In the result, I pass the following :

## ORDER

The reference is Rejected holding that the action of the Management of Pragathi Grameena Bank. HO: Gandhi Nagar, Bellary in imposing the penalty of dismissal from services of Sri R Murali Krishna, is legal and justified.

(Dictated to UDC transcribed by him, corrected and signed by me on 14th October, 2013).

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2013

कांआ 2660.—औद्योगिक विवाद अधिनियम, 1947 ( 1947 का 14 ) की धारा 17 के अनुसरण में केन्द्रीय सरकार बड़ोदा उत्तर प्रदेश ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट ( संदर्भ संख्या 19/2011 ) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[सं एल-22012/20/2010-आई आर ( बी-I) ]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2660.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Baroda Uttar Pradesh Gramin Bank and their workmen, received by the Central Government on 29/11/2013.

[No. L-12012/20/2010-IR(B-I)]

SUMATI SAKLANI, Section Officer

## ANNEXURE

**BEFORE SRI RAMPARKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR**

**Industrial Dispute No. 19/2011**

Between

Rakesh Kumar Bhartiya,  
Son of Sri Laloo, C/o Sri R M Shukla,  
Flat No. 705, Shastri Nagar, Kanpur

And

The Regional Manager,  
Baroda Uttar Pradesh Gramin Bank,  
Regional Office,  
3D Tashkand Marg,  
Allahabad

**AWARD**

1. Central Government MoL, New Delhi, *vide* notification No. L-12012/20/2010-IR(B-1) dated 4.4.11 has referred the following dispute for adjudication—
2. Whether the action of the management of Baroda Uttar Pradesh Gramin Bank Allahabad in removing Sri Rakesh Kumar Bhartiya son of Sri Laloo from service *vide* their order dated 13.01.2009 is legal and justified? To what relief is the workman entitled?
3. Brief facts are—
4. This is a case where the workman has filed the claim statement making a prayer that the order of removal dated 13.01.2009 along with the order of appeal passed against the workman by the opposite party be held illegal and unjust.
5. Opposite party has filed the written statement refuting the aversions of the claimant.
6. After exchange of pleadings several opportunities were given to the claimant to produce oral as well as documentary evidence, but the claimant did not produce any oral documentary evidence. Even he did not appear at the time of arguments.
7. Opposite party remained present throughout and argued the case.
8. Opposite party has relied upon a decision 1981 (29) FLR V K Raj Industries *Versus* Labour Court, Allahabad High Court, wherein the Hon'ble High Court held—burden to prove order of termination to be illegal—workman not appearing nor producing evidence before Labour Court—Labour Court had no jurisdiction to hold order illegal.
9. Therefore, considering all the facts and circumstances of the case, I am also of the view that initial burden lies on the workman to prove his case. As he has miserably failed to produce any evidence therefore, reference is decided against the workman and in favour of the management.
10. Reference is answered accordingly.

RAM PARKASH, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2013

**का०आ० 2661.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रिजर्व बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण, मुम्बई के पंचाट (संदर्भ संख्या 2/46/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[सं० एल-12012/96/2011-आई आर (बी-1)]  
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2661.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/46) of 2013 of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of Reserve Bank of India, and their workmen, received by the Central Government on 29/11/2013.

[No. L-12012/96/2011-IR(B-I)]  
SUMATI SAKLANI, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL NO. 2, MUMBAI**

**PRESENT:** K.B. KATAKE, Presiding Officer

**REFERENCE NO. CGIT-2/46 OF 2013**

Employers in relation to the management of Reserve Bank of India

The General Manager  
Reserve Bank of India  
Fort, Mumbai.

**AND  
Their Workmen**

Shri Ramesh Babaji Mhadlekar  
Maintenance Quarters No. 2  
RBI Staff Quarters  
Behind Maratha Mandir  
Mumbai Central  
Mumbai-400 008.

**APPEARANCES:**

FOR THE EMPLOYER : Mr. K.P.S. Kapoor,  
Representative.

FOR THE WORKMEN : Mr. P.G. Uparkar,  
Representative.

Mumbai, dated the 30th September, 2013.

**AWARD PART-I**

The Government of India, Ministry of Labour & Employment by its order No. L-12012/96/2011-IR (B-I), dated 08.12.2011 (Transferred *vide* order dated 18/07/2013) in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the

Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of Reserve Bank of India, Mumbai in dismissing Shri Ramesh Babaji Mhadlekar, Driver from services of the Bank vide their order No. 77/338 dated 31/01/2011 is legal and justified? To what relief the workman is entitled?"

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, second party workman filed his statement of claim at Ex-3. According to the workman he was employee of first party since July 1991 as a Driver. He has driving license to drive light motor vehicle. On the basis of the said license he was appointed as a Driver. He was confirmed in the service on 17/01/1994. He was driving light motor vehicle for about 22 years of his service. On 9/12/2009 the workman was transferred to the Issue Department, Fort Mumbai to drive a bullion van which falls in the category of heavy motor vehicle. The workman appraised his inability to drive bullion van as he was holding light motor vehicle license and was appointed on the basis of said license. The management neither replied his letter nor made any clarification in the matter and kept silent. Under the law he was not supposed to drive heavy motor vehicle as he was holding driving license to drive light motor vehicle only. Therefore refusal to obey the order of his superior to drive heavy vehicle does not amount to misconduct.

3. As the workman refused to drive heavy motor vehicle the first party bank initiated disciplinary proceedings against him under Regulation 32 of Reserve Bank of India (Staff) Regulation, 1948. The said Regulation is not approved by appropriate Government. The workman had replied the show cause notice *vide* his letter dt. 12/03/2010 alongwith certificate issued by the competent authority RTO certifying that the license issued to the workman at the time of recruitment was to drive light motor vehicle only. The management did not accept his representation and issued a charge sheet dated 28/04/2010. He also replied the charge sheet. The inquiry officer completed the inquiry in two sittings of few hours *i.e.* on 16/7/2010 & 11/8/2010. The proceedings were conducted in English and partly in broken confused Hindi language. No official translator was provided by the management. The defence representative of the workman raised objection and requested to hold the proceeding in Marathi. His request was turned down by the Inquiry officer though he was well aware that the workman as well as his defence representative belonged to Class-IV category and were not versed with English language and could not understand the confused broken Hindi mixed with English words used by IO and PO during the course of inquiry. The workman has demanded copies of all the relevant documents on the basis of which disciplinary proceeding was initiated. The

same were denied. The witnesses who made complaint were not summoned. Therefore opportunity to cross examine those witnesses was denied. There was gross violation of the Principles on Natural Justice. The minutes of the inquiry proceedings were in English. The workman and his defence representative had signed the minutes without understanding the contents therein. The DR had expressed his protest about the same. The Hindi translation of the documents were supplied after a time gap of more than two months and do not bear signature thereon. The inquiry officer did not take into account the report of RTO stating that workman could drive only light motor vehicle and his license was only for the same. The report of the inquiry officer was unfair. The findings of the IO are perverse. He held the workman guilty. On the basis of the report his services were terminated.

4. The workman preferred appeal. However appellate authority dismissed his appeal. Thereafter the workman raised industrial dispute before ALC (C). As conciliation failed, as per the report of ALC (C), the Labour Ministry has sent the reference to this Tribunal. The workman prays that as the inquiry is not fair and proper and the findings of the IO are perverse, the order of dismissal from service be set aside and he be reinstated in the service with full back wages.

5. The first party resisted the claim statement *vide* its written statement at Ex-4. According to them the workman was appointed in the service of the Bank since 31/07/1991. At the time of appointment he had produced copy of driving license dt. 7/9/1987. On 9/12/2009 he was posted to issue department. Next day the workman submitted a letter addressed to Regional Director, RBI stating that he had been posted to Issue Department and he was holding license for light motor vehicle and in Issue Deptt. he was required to drive heavy motor vehicle which is an offence under the law. In Issue Department he was required to drive bullion van for carrying remittances. He reported Issue Department on 18/12/2009. In his letter he has stated that he shall not drive heavy motor vehicle as it would be breach of law of the land. As per the appointment letter dated 31/07/1991 he was required to drive bank's fleet of automobiles cars, vans bullion vans etc. Driving of bullion van which is heavy motor vehicle is essential part of drivers' duties in the Bank. As the workman refused to drive bullion van of the bank in Issue Department, a show cause notice dt. 25/02/2010 was issued to him. The workman replied the notice. His explanation was found not satisfactory. Therefore he was issued charge-sheet dt. 28/04/2010 for having committed breach of Regulation 32 of RBI (Staff) Regulations, 1948 by failing to comply with and obey the order or direction issued by his superior as he refused to drive bullion van failing to abide by the office discipline. The workman replied the charge-sheet. His reply was found not satisfactory. Therefore domestic inquiry was initiated against the employee. The inquiry officer conducted the inquiry by following the principles of natural justice and full

opportunity was given to the workman to defend himself. The IO has completed the inquiry in two sittings. He found that workman as per his appointment order was required to drive the vehicles of the Bank including the bullion van and the workman refused to drive the bullion van. The IO held him guilty for the misconduct failing to comply with and obey the orders and directions issued by the superior. The copy of the report was sent to the workman with show-cause notice. After considering his reply the competent authority held the workman guilty for the misconduct and imposed punishment of termination of his services. The appeal of the workman was heard on merit by Appellate Authority and the same was also dismissed. The inquiry was fair and proper and the findings of the IO are not perverse. Therefore the first party prays that the reference be rejected with cost.

6. My Ld. Predecessor has framed the preliminary issues for my determination. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether the inquiry held against workman is fair and proper?	Yes
2.	Whether the findings given by the Inquiry Officer are perverse?	No

#### REASONS

##### Issue No. 1:—

7. In respect of inquiry the workman has not disputed that as he refused to drive bullion van show cause notice was issued to him. He replied the notice. As his reply was not satisfactory the disciplinary authority issued charge sheet to him. They appointed inquiry officer. The workman has not disputed the fact that the IO has explained the charge to him. It is also not disputed that the IO has examined the witnesses in presence of the workman and his defence representative. The defence representative of the workman cross examined the witnesss. The workman has also admitted that he received copies of all the documents produced in the inquiry proceedings. The second party workman also admitted that he was given opportunity to examine himself and lead his evidence. The fact is also not disputed that after completion of hearing the IO has submitted his report. The copy thereof was sent to the workman with show cause notice. Workman submitted his reply and thereafter the disciplinary authority has passed the order of dismissal of services of the workman. In short the IO has followed the procedure for conducting the inquiry as contemplated by Hon'ble Apex Court and has complied all the points laid down by the Apex Court in *Sur Enamel and Stamping Works Ltd. V/s. Their Workmen* 1963 II LLJ 367.

8. In the case at hand the only objection raised on behalf of the workman is that the inquiry proceeding was recorded in English and when he demanded translated copies of the inquiry proceedings, they supplied him Hindi translated copies and they were supplied at late stage. In this respect I would like to point out that the workman has not contended anything in his affidavit at Ex-6 that the IO has violated the principles of natural justice. On the other hand witness on behalf of the Bank Shri A.N. Kulkarni has stated in his affidavit at Ex-7 that IO has appointed a translator who explained everything to the workman in Marathi. This witness has also stated in his cross that translator was provided to the workman during the inquiry. He also denied that translated inquiry proceedings were made available late to the workman. It was vaguely put in his cross examination that the principles of natural justice while conducting inquiry was not followed. However workman does not say anything about the same in his own affidavit at Ex-6. It shows that through translator everything was explained to the workman in Marathi and the IO has prepared inquiry proceedings in English. Furthermore it is also clear that Hindi translated copies were also supplied to the workman on his demand. In the circumstances it cannot be said that there is violation of principles of natural justice. On the point Bombay High Court ruling can be resorted to in *National Organic Chemicals Ltd. & Ors. V/s. Pandit Ladaku Patil* 2008 III CLR 716 wherein the inquiry was conducted in Marathi and the evidence was recorded in English. The Hon'ble Court held that, the inquiry cannot be quashed for following such a procedure of recording evidence in English.

9. In short the objection raised on behalf of the second party workman is found devoid of merit that there was violation of principles of natural justice. On the other hand in the light of facts, circumstances and evidence on record conclusion can be arrived at that the IO has conducted the inquiry after following the principles of natural justice. Thus I hold that inquiry was fair and proper. Accordingly I decide this issue no.1 in the affirmative.

##### Issue no. 2:—

10. In this respect the fact is not disputed that the workman was transferred by the first party to Issue Department wherein he was directed to drive bullion van which comes in the category of heavy motor vehicle. According to the workman he was possessing license to drive only light motor vehicle. Therefore as per the Motor Vehicle Rules he was not authorized to drive heavy motor vehicles. Therefore giving direction to drive heavy motor vehicle cannot be obeyed and he was not under obligation to obey the said direction. Therefore according to him he has not committed any misconduct. According to him it is not open for the employer to fish out some conduct as misconduct and punish the workman even though alleged misconduct would not be comprehended in any of the



enumerated misconducts. In this respect it is contended on behalf of the first party that in the appointment letter it is mentioned that workman was appointed to drive the vehicles of the first party. It includes light motor vehicle and heavy motor vehicle as well. According to them at the time of recruitment the second party workman had produced the driving license indicating that he was authorized to drive transport vehicles w.e.f. 07/09/1987. His license was renewed on 06/08/1989 till 06/08/1992. In this respect the workman has denied that any such license was issued to him. According to him his driving license was only for driving light motor vehicles therefore when he was asked to drive bullion van he had written a letter that as he had no license to drive heavy motor vehicle he was unable to drive the bullion van. The fact is also not disputed that the second party has attended the staff driving course. However according to him as his license was for light motor vehicle, he did the course of light motor vehicle only. The workman has produced on record his driving license. It shows that it was for light motor vehicle and was renewed upto 06/08/1992. In the circumstances the Ld. adv. for the second party submitted that as workman was holding driving license to drive light motor vehicle he was not authorized to drive bullion van which comes in the category of heavy motor vehicle. Therefore according to the Ld. adv. for workman driving heavy motor vehicle by the workman would amount to offence under Motor Vehicle Act. Therefore it is submitted that even the higher authority cannot ask or direct the workman to drive heavy motor vehicle. Therefore the Ld. adv. submitted that the workman has rightly pointed out the fact to the higher authority and written letter to that effect. The workman has also admitted the said fact in his cross examination that he had written the letters M-1 & M-2. In his letter dt. 22/12/2009 it is mentioned that he has never refused to do his duty on light motor vehicle for which he is holding license and he reiterate his stand that he would not drive heavy vehicle and breach laws of land.

11. The fact is not disputed that the workman has refused to drive bullion van which comes in the category of heavy motor vehicle. According to workman as his license is only for light motor vehicle he has refused to drive heavy motor vehicle. Therefore according to him even his superior cannot direct him to commit an act which amount to an offence. Therefore he has written two letters to his higher authorities and brought these facts to their notice and had refused to drive the heavy motor vehicle. Therefore according to the Ld. adv. for the second party workman has not committed any misconduct, on the other hand he has obeyed the law of the land. In this respect I would like to point out that when workman was posted to the Issue Department and was directed to drive bullion van, instead of outrightly refusing to drive the heavy vehicle he could have sought time of fifteen days or one month to obtain license to drive heavy motor vehicle. A person who is driving light motor vehicle for more than 20 years can

easily get the driving license to drive heavy motor vehicle. Instead of seeking time to obtain necessary license the workman has outrightly refused to drive the bullion van by saying that it comes in the category of heavy vehicle and his license is to drive light motor vehicle only. No doubt it amount to disobedience and refusal to obey the order of superior. The workman ought not have clung over the technicality creating hardship to the employer and others in the department. He could have sought few days' time to obtain necessary license and the problem could have been sorted out. Instead of that the workman has outrightly refused to drive the bullion van. In the circumstances I hold that the inquiry officer has rightly held him guilty for the alleged charge of misconduct. In this respect further I would like to point out that the conclusion arrived at by the inquiry officer is based on the evidence on record and admitted facts. This Tribunal is not sitting as appellate court. Therefore though some other inference can be drawn, the same is not permitted. The law on the point is laid down by Hon'ble Supreme Court in *US State Road Transport Corporation & Ors V/s. Musais Ram & Ors.* 1999 (83) FLR 226 (SC) wherein on the point Hon'ble Court observed that;

"The Court does not sit in appeal over the findings of the Inquiry Officer. If the findings are based on uncontroverted material placed before the IO, it cannot be said that these findings are perverse."

12. In the light of above ruling and discussion herein above, I come to the conclusion that findings of the Inquiry Officer are not perverse. Accordingly I decide this issue No. 2 in the negative and proceed to pass the following order:

### ORDER

- (i) The inquiry is held fair and proper.
- (ii) Findings of the Inquiry Officer are not perverse.
- (iii) The parties are directed to argue/lead evidence on the point of quantum of punishment.

Date: 30.09.2013

Sd/-  
K. B. KATAKE, Presiding Officer,  
CGIT-2, Mumbai.

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

### PRESENT

K. B. KATAKE, Presiding Officer

REFERENCE No. CGIT-2/46 of 2013

### EMPLOYERS IN RELATION TO THE MANAGEMENT OF RESERVE BANK OF INDIA

The General Manager  
Reserve Bank of India,  
Fort, Mumbai.

**AND**

Their Workmen

Shri Ramesh Babaji Mhadlekar  
Maintenance Quarters No.2  
RBI Staff Quarters  
Behind Maratha Mandir,  
Mumbai Central,  
Mumbai 400 008.

**APPEARANCES:**

FOR THE EMPLOYER : Mr. K.P.S. Kapoor,  
Representative.

FOR THE WORKMEN : Mr. P.G. Uparkar,  
Representative.

Mumbai, dated the 24th October, 2013

**AWARD PART-II**

The Government of India, Ministry of Labour & Employment by its Order No.L-12012/96/2011-IR (B-I), dated 08.12.2011 (Transferred vide order dated 18/07/2013) in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of Reserve Bank of India, Mumbai in dismissing Shri Ramesh Babaji Mhadlekar, Driver from services of the Bank vide their order No.77/338 dated 31/01/2011 is legal and justified? To what relief the workman is entitled"

2. In the Part-I award the inquiry was held fair and proper and the findings of the Inquiry Officer were found not perverse. Now the following remaining issues are for my determination in this Part-II Award. I record my findings thereon for the reasons to follow.

<b>Sr. Issues No.</b>	<b>Findings</b>
3. Whether the punishment awarded to the workman is disproportionate to the charges proved against him?	Yes
4. What relief the workman is entitled to?	Compulsory retirement with all retirement benefits.

**REASONS****Issue nos.3 & 4 :**

3. In this case the workman was found guilty for refusal to perform his duty as a Driver as he refused to drive bullion van. Therefore he was held guilty for the

misconduct of failing to comply with and obey the orders and directions issued by his superior. In this respect the Ld. Adv. for the second party submitted that the workman was asked to drive heavy motor vehicle. The fact is not disputed that bullion van comes in the category of heavy motor vehicle. Driving such a vehicle is an offence as workman was holding license to drive light motor vehicle. In this respect it was submitted on behalf of the first party that, at the time of recruitment their requirement was to recruit a driver having license to drive all types of vehicle. In the case at hand fact is not disputed that the workman was not having driving license to drive heavy motor vehicles. Therefore he was not supposed to drive bullion van.

4. On the point issue both the advocates have submitted lengthy arguments and have referred number of rulings. Instead of entering into the controversy I would like to point out that when the workman was asked to drive bullion van which comes in the category of heavy vehicle, instead of outrightly refusing to drive the same, he could have sought for time to obtain the necessary license to drive heavy moto vehicle. He could have brought the fact to the notice of his superior and could have sought for time of 15 days or a month to obtain the necessary license to drive heavy motor vehicle. No doubt it amount to an offence to drive heavy motor vehicle without license to that effect. The workman instead of seeking time to obtain necessary license he has shown his adamant nature and straight away refused to drive the vehicle. Therefore departmental inquiry was initiated against him. There ought to have some understanding and common sense with the workman while dealing with the superior officers.

5. In this respect the Ld. Adv. for the second party has submitted that illegal order of the superior need not be obeyed by the employee. The Ld. Adv. has not produced the full citation. He produced only one page wherein it is observed that;

"A protest or disobedience against illegal order may not be termed as misconduct in every case. In an appropriate case it may be termed as revolting to one's sense of justice."

6. No doubt, had he not in possession of any license his refusal to drive a vehicle could have been justified. In the circumstances it is clear that, though workman was adamant, his incidental refusal to drive the heavy vehicle to the certain extent could have been justified for want of license to drive heavy motor vehicle. Had the workman been a peon or a clerk without any driving license, his straight away refusal to drive the vehicle though directed by his superior, could have been justified. However in the case at hand, as he was recruited as a driver, instead of straight away refusing to drive, he ought to have sought for time of few days to obtain the license to drive heavy motor vehicle. Instead of seeking time to obtain necessary

license, he has out rightly refused to drive the van. In the circumstances he was rightly held guilty and said finding is therefore upheld. Though he was rightly held guilty, in this backdrop I found that punishment of dismissal is shockingly disproportionate because the workman had assigned reason for not driving the heavy motor vehicle, as his license was driving light motor vehicles only. In the circumstances to meet the end of justice, I hold that though the workman is guilty, instead of dismissal, compulsory retirement with all retirement benefits would serve the purpose. Thus I proceed to pass the following order:

### ORDER

- (i) Reference is partly allowed with no order as to cost.
- (ii) Punishment of dismissal imposed upon the workman is hereby set aside instead of that, the workman be retired compulsorily with all retirement benefits.

Date: 24.10.2013

K. B. KATAKE, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2013

का०आ० 2662.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कर्नाटका बैंक लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बैंगलोर के पंचाट (संदर्भ संख्या 27/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[सं० एल-12012/27/2009-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2662.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of The Karnataka Bank Ltd., and their workmen, received by the Central Government on 29/11/2013.

[No. L-12012/27/2009-IR(B-I)]  
SUMATI SAKLANI, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 11th November 2013

**PRESENT :** SHRI S.N. NAVALGUND,  
Presiding Officer

### CR No. 27/2010

#### I Party

Sh. Sampath Kumar since deceased rep. by Smt. H.S. Manjula & Sh. Madhu, No. 3284/A, 5th Cross, Sri Nanjundeswara Nilaya, Gayathri Nagar, Bangalore-21.

#### II Party

The Deputy General Manager, Karnataka Bank Limited, HR & IR Department, HO: Mahaveera Circle, Mangalore—2.

### APPEARANCES:

I Party : Shri V.R. Prasanna,  
Advocate

II Party : Shri Ramesh Upadhayay,  
Advocate

### AWARD

1. In this reference by the Central Government *vide* Order No. L- 12012/27/2009-IR(DB-I) dated 02.07.2010 for adjudication on the following:

### SCHEDULE

"Whether the action of the management of the Karnataka Bank in terminating the services of Shri S Sampath Kumar *w.e.f.* 11.06.2008 is legal and justified? If not what relief he is entitled to?"

after holding necessary enquiry the reference was allowed by passing an Award on 06.02.2013 holding that the Action of the Karnataka Bank Limited in terminating the services of Sh. S. Sampath Kumar *w.e.f.* 11.06.2008 is not legal and justified and that he is entitle for reinstatement with full backwages, continuity of service and all other consequential benefits that he would have received in the absence of his impugned termination and the amount received by him consequent to his impugned termination is liable to be adjusted in the arrears of salary payable to him and same was published in the gazette dated 23.03.2013. When the same was assailed by the II Party/management before the Hon'ble High Court of Karnataka in W.P. No. 33160/2013(L-TER) since it was brought to the notice that before passing of Award the I Party workman was expired leaving behind him Smt. H.S. Manjula and Sh. Madhu as his wife and son respectively, the Hon'ble High Court by order dated 30.09.3013 while confirming the Award as it related to full backwages, reinstatement, continuity of service remitted back the proceedings for an enquiry over entitlement of persons claiming to be the legal representatives of the deceased workman. After receiving back the records from the Hon'ble High Court Sh. Prasanna V.R. Advocate filed an application under Order 1 Rule 10 read with Order 22 Rule 3 of CPC to bring the wife Smt. H.S. Manjula and a son Sh. Madhu of deceased I Party workman as his legal representatives and as the learned advocate appearing for the II Party also filed a Memo they are the only legal representatives of the deceased I Party workman,

they were allowed to be brought on record in place of the deceased I Party workman. Since the II Party admits that I Party workman died leaving behind him his wife Smt. H.S. Manjula and a son. Sh. Madhu as his only legal representatives they are both entitle for the amount that would have been received by the deceased I Party workman. Hence, I pass the following

### ORDER

It is declared that Smt. H. S. Manjula the wife and Sh. Madhu, son of the deceased I Party workman are entitle for full backwages that was payable to the deceased workman till the date of his death and other terminal benefits consequent to his death.

S.N. NAVALGUND, Presiding Officer

नई दिल्ली, 29 नवम्बर, 2013

का०आ० 2663.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एचडीएफसी बैंक लिमिटेड के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट (संदर्भ संख्या 14/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/11/2013 को प्राप्त हुआ था।

[सं० एल-12012/83/2011-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 29th November, 2013

**S.O. 2663.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of the HDFC Bank Ltd., and their workmen, received by the Central Government on 29/11/2013.

[No. L-12012/83/2011-IR(B-I)]

SUMATI SAKLANI, Section Officer

### ANNEXURE

**BEFORE THE RAMPARKASH, PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, KANPUR**

#### Industrial Dispute No. 14 of 2012

Between-  
Shri Bhupendra Kumar,  
S/o Sri Ram Shankar,  
12/400, Gwaltoli,  
Kanpur.

AND

The Manager,  
HDFC Bank Ltd.,

555 Subhash Chowk,  
Auraiya,  
District Auraiya

### AWARD

1. Central Government Mol, New Delhi, *vide* notification No. L-12012/83/2011(IR(B-I) dated 10.02.2012, has referred the following dispute for adjudication to this tribunal.
2. Whether the action of the management of HDFC Bank Ltd in terminating the services of Sri Bhupendra Kumar son of Sri Ram Shankar as claimed by him *w.e.f.* 25.01.2010 is legal and justified ? To what relief the workman is entitled?
3. Brief facts are.
4. It has been alleged by the claimant that he was appointed as Deputy Manager Retail on 18.08.09 by HDFC Bank at Gonda Branch U.P. His nature of duty was of workman but the appointment has been shown as Dy. Manager. After appointment he was sent to Unnao instead of Gonda, therefore, the management was adopting unfair labor practice. It has further been alleged by the claimant that although he was appointed for the retail work but he was forced to marketing work of which he was not having any experience. Due to the above reasons he got mentally disturbed and due to the pressure of the management he submitted hi resignation on 25.01.10 to the Deputy Manager Human Resources Department Gurgaon. Thereafter he sent a letter on 08.09.10 withdrawing his resignation letter, by registered post. But when he reached office he was not permitted to work and it was said that his resignation letter has been accepted and he was ceased to work under the management.
5. It is said that he was not informed in wirting of his acceptance of his resignation letter therefore the action of the management is void and unjust. Therefore he has prayed that he may be reinstated in service with full back wages and all consequential benefits.
6. Notices were sent to the opposite party but they did not appear or filed any reply.
7. Heard and perused the whole file.
8. Claimant has filed his affidavit as W.W.1 in support of evidence. He has also filed documents paper No. 6/3 -6/18 *vide* list dated paper No. 6/2.
9. I have examined each and every document.
10. It is a principle of law that a person who wants some relief from the court or the tribunal the initial burden lies on his shoulder. He has to prove his case *prima facie* even in the absence of the opposite party.



11. Claimant was appointed on 18.08.09 as Deputy Manager as per his statement and documents. He stated that when he was frequently transferred and was under pressure to do marketing work also he got mentally disturbed and submitted his resignation on 25.01.2010.
12. There is no such paper from which it may be inferred that this resignation letter was submitted by him under the pressure of the management.
13. The applicant thereafter kept on sleeping on several months and one fine morning he awaked and submitted an application claiming for the withdrawal of the resignation letter. There is photocopy copy paper no.6/12 in this respect. Though the workman has not filed any receipt to the effect that he had actually sent the letter before the management withdrawing his resignation letter. He has filed certain papers which he has received from the bank which is paper no.6/13-17. From these documents it can be safely inferred that the bank has stated that the resignation of the workman has been accepted on the same day i.e. 25.01.2010, but the workman was required to serve the notice as per terms and condition of the appointment offer, as the applicant has not complied with terms of the appointment and moreover according to the management there remains recovery of huge amount against the workman.
14. Therefore considering the all aspects and circumstance case of the case it is found that the applicant himself chose to submit his resignation even without serving any notice. It was not expected from him that he will not serve any notice or will not enquire after submission of his resignation. He did not care to go his office and to inquire in the matter. One fine morning after the gap of more than 9 months he submitted an application for withdrawing his resignation as alleged by him. Whereas the management has already accepted his resignation on the same date i.e. 25.01.2010.
15. I find that the management has not committed any illegality in accepting his resignation letter. Therefore, I find that there is no illegality in the action of the management. Accordingly the workman is not entitled for any relief pursuant to the present reference order.

RAM PARKASH, Presiding Officer

नई दिल्ली, 2 दिसम्बर, 2013

का.आ. 2664.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय, नई दिल्ली 2 के पंचाट (04/05) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/12/2013 को प्राप्त हुआ था।

[सं. एल-12012/207/2004-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 2nd December, 2013

**S.O. 2664.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/05) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 02/12/2013.

[No. L-12012/207/2004-IR(B-II)]

RAVI KUMAR, Section Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT - II DELHI

**Present:-** Shri Harbansh Kumar Saxena

**ID No. 04/05**

Sh. Virender

Versus

Bank of Baroda

#### AWARD

The Central Government in the Ministry of Labour vide notification No L-12012/207/2004-IR(B-II) dated 5/1/2005 referred the following industrial Dispute to this tribunal for the adjudication :—

"Whether it is a fact that Shri Virender was engaged as temporary Peon during the period Sept. 1992- Nov. 2000 by the management of bank of Baroda? If so, whether the demand of the Bank of Baroda Employees Union for his reinstatement *w.e.f.* 01.12.2000 and regularization of his service is justified and legal and what relief is the disputant concerned entitled to?"

Reference was received in this tribunal. Which was register as I.D No. 4/05 and claimant was called upon to file claim statement on 1-04-2005.

On 12/07/2005 Ministry of Labour issued corrigendum as follows:—

"Whether it is a fact that Shri Virender was engaged as temporary Peon during the period Sept. 1992- Nov. 2000 by the management of bank of Baroda? If so, whether the action of the management in terminating him from service is justified and whether the demand

of the Bank of Baroda Employees Union for his reinstatement *w.e.f.* 01.12.2000 and regularization of his service is justified and legal and what relief is the disputant concerned entitled to?"

After service of notice workman/claimant filed claim statement on 5/10/2005. Wherein he stated as follows:—

1. That the workman Shri Virender was engaged in September 1992 by the management of Bank of Baroda, Zonal Office Delhi and was employed at Parliament Street Branch New Delhi. He continued to work in the Bank as Peon and performed the duties of regular peon.
2. That there were number of other persons employed as temporary employees in other branches of the bank in Delhi as peons during that period. Hence an Industrial Dispute was raised by the Union for absorption of temporary employees *vide* its letter of 25-01-95. The management filed its reply dated 19-05-1995 before the Asstt. Labour commissioner (Central). Meantime the bank made a requisition to the Employment Exchange Delhi for filling up the vacancies existing in branches in Delhi. Four names were sponsored including the workman Shri Virender by the Employment Exchange out of seven temporary employees in March, 1996. The Management Bank interviewed the candidates and recruited them except the workman Shri Virender. Even after March 1996 Shri Virender, the Workman was continued to be employed as temporary peon. Though the Bank not selected the Workman for permanent employment with ulterior motive, it still continued the employment of workman as temporary from March 1996 till 30-11-2000. This shows oblique motive and unfair labour practice. The non selection of Workman in March 1996 for permanent employment was not for bonafide purpose and to deny permanent employment only, he was not selected at all. This would amount to victimization also as the Union had been raising the dispute of regularization of workman in the past. Hence the workman was victimized as his grievance was raised by way of Industrial Dispute by the Union and the Federation.
3. That again the All India Bank of Baroda Employees Federation raised dispute as to the cases of temporary employees in Bombay. This included the case of Workman. During the conciliation Proceedings held on 25-09-2000 the representative of the Bank Management stated that the workman was continued to be engaged as temporary peon and the matter has been to the Govt. of India for permission to regularize the services of temporary employees and the Management would regularize the services of the workman Shri Virender also. Hence the Union withdrew the dispute.
4. That the Workman continued to work as temporary peon till 30-11-2000 and on which date the Branch Manager told the Workman not to come work from 1-12-2000. Hence the services of Workman Shri Virender were retrenched on 1-12-2000 in gross violation of Section 25-f of I.D Act. No notice or notice pay in lieu of notice or retrenchment compensation was given at the time of retrenchment. Hence the retrenchment was void ab-initio.
5. That the Management filed its reply dated 09/10 Aug., 2000 to Regional Labour Commissioner (Central) Mumbai admitting therein that the Workman was employed and the case was forwarded to the Govt. of India for permission for regularization. It was also stated by the Management of the Bank during the Conciliation Proceedings of 25-09-2000 that it was seeking permission from Govt. of India for regularization of the Workman and other employees.
6. That the Workman had continuously been working in the Bank and had completed more than 240 days of continuous service in the 12 calendar months preceding the date of termination of services.
7. That the action of the Bank in engaging/employing and continued Sh. Virender as temporary peon and extracting work of regular peon but paying less than the scale wages prescribed under the Bipartite Settlement and payable to the regular peon. Non issuing of order of appointment and terminating the services without a written order; not allowing to mark attendance etc. would amount to unfair labour practice.
8. That no leave facilities were extended to the workman. The workman was even asked to work on Sundays. There was no paid weekly holiday given to the workman. No other service benefits was given to the workman. Under law the workman is entitled to regular pay scales as applicable to other regular employees as he has performed duties of regular nature continuously.
9. That the action of the Bank in keeping the workman as temporary while extracting the permanent and regular nature of duties continuously is unfair labour practice. The non-payment of regular scale, paying a meagre amount as wages, non-issuing of order of appointment in violation of para 595 of Sastry Award, violating the provisions of Bipartite Settlement, denying the service benefits including leave facilities etc. would amount to unfair labour practice.
10. That the workman is entitled to the relief of reinstatement with full back wages and other service benefits as the termination being violative of Section 25-F of ID. Act.

11. That under clauses 20.7 and 20.8 of the first Bipartite Settlement temporary hands cannot be employed beyond a period of three months. That too for limited purposes of increase in work and the permanent employee is on leave. The workman was not employed for the above purposes. The workman was continuously employed more than 240 days services from 1992 to 30-11-2000. The prolonged continuous service itself is a proof that the workman was performing permanent nature of duties and existence of permanent vacancy.
12. That the provisions of Bipartite Settlement and that of Sastry Award particularly para 495 and 520 have been violated in employing continuing and retrenching Shri Virender. The principles of 'Last come first go' was not followed while retrenchment the Workman. No Seniority List was maintained as required Under Rule 76,77 &78 of the Central Rules, ID Act. The Bank has committed unfair labour practice and victimization.
13. That the prolonged continuous employment clearly establishes the fact that there was existence of permanent vacancy and requirement. Therefore the workman was employed continuously. Hence a right has accrued to the Workman to remain in the employment as permanent peon. Hence his services after reinstatement needs to be regularized as the retrenchment being void ab-initio.

On the ground mentioned in the claim statement claimant prayed as follows:-

It is therefore prayed to this Hon'ble Tribunal that it may please to pass Award holding that the workman is entitled to reinstatement as the retrenchment/termination is void ab-initio being in gross violation of Section 25-F of the ID. Act and is entitled to all consequential benefits including full back wages. It may further be ordered that the workman is entitled to be regularized from March 1996 on which date other three workmen were made permanent by regularization/absorption and also order to pay the consequential benefits of such regularization from March 1996 onwards. Any further relief as may be found necessary in the given facts and circumstances may also be ordered.

On 21/12/2006 written statement on behalf of Bank of Baroda was filed.

On the basis of which Bank of Baroda prayed as follows:—

In the fact & circumstances of the case mentioned hereinabove and having regard to the provisions and pronouncements of law it is now therefore prayed that the Hon'ble Tribunal may kindly;

- A) hold and declare that the order of reference is bad in law not in conformity with the mandate of law having

been made without application of mind not referring real dispute.

- B) hold and declare that the Hon'ble Tribunal lacks competence & jurisdiction to pass an award granting regularization of the service of the workman concerned who is not in employment of the O.P. Bank;
- C) Forfeit union's right to file its plea or SOC and pass award considering O.P.'s submissions and the provisions and pronouncements of law which are referred to above and may further be referred at any stage, if necessary;
- D) hold and declare that the amending order of reference is incompetent and ultra vires the Government's power to amend reference already made;
- E) pass any other order or orders as the Hon'ble Tribunal may deem fit and just in the facts and circumstances of the case including costs of these proceeding to the O.P.
- F) hold and declare that of discontinuing engagement of the workman as daily wager is just and legal.

Claimant in reply to written statement filed his rejoinder and virtually denied allegations of written statement and clarified his case.

My Ld predecessors has not formulated any other issue but tried to determine question of determination sent to Tribunal for adjudication.

In support of his case workman Sh. Virender filed his affidavit on 24/07/2007. He was cross-examined by Sh. T.C. Gupta, A/R for the management on 11/12/2007.

Workman in support of his statement produced WW2 Sh. R.L Virmani on 08/01/2008. Sh. R.L. Virmani, WW2 was cross-examined by Shri T.C. Gupta on 12/02/2008.

Management in support of his case produced no evidence. His evidence was closed on 03/11/2008.

Written submission on behalf of workman were filed on 24/11/2011. Which are as follows:—

That the workman was engaged in September 1992 by the management of Bank of Baroda, Zonal Office, New Delhi and posted at Parliament Street Branch as a Peon and he continued to work as temporary employee as several posts of peons had existed in various branches of the Bank and there were other temporary employees also employed as peons against those vacancies. He worked in the Bank from September 1992 to 30th November 2000 regularly on temporary basis. As the Management was extracting work of regular nature and continued to treat them as temporary employees the Bank of Baroda Employees Union Delhi

raised an Industrial Dispute before the Regional Labour Commissioner at New Delhi in January 1995 for regularization of services of those employees. The management filed the reply and that in the meantime the Bank made a requisition to the Employment Exchange, New Delhi for filling up the vacancies of peons existing in the Branches. In response to Bank's requisition the Employment Exchange sponsored the names of the candidates which included the name of the Workman also. He was interviewed by the management alongwith other candidates in March 1996 but was not selected. However the Bank management continued to engage the workman on temporary basis even there after.

As large number of vacancies of peons and sweepers were existing in various branches of the Bank in other parts of the country. All India Bank of Baroda Employees Federation with Head Quarters at Bombay raised an Industrial Depute before the Regional Labour Commissioner © Bombay for regularization of services of temporary employees. This included the name of the workman also. The management filed its reply before the Regional Labour Commissioner © Bombay on 10.08.2000 in which it was stipulated that the cases of temporary employees have already been forwarded to the Govt. of India for permission and the case of the workman would be considered along with other temporary employees after the receipt of permission of the Govt. A copy of the said letter is enclosed and marked as annexure A. It is submitted that during the conciliation proceedings held on 25.09.2000 at Bombay the representative of the Management stated that the workman was continued to be engaged on temporary basis and the matter has been sent to the Government for permission to regularize the services of the temporary employees and the management would regularize the services of Sh. Virender also. A copy of proceedings held on 25.09.2000 is enclosed and marked as Annexure 'B'

In view of the assurance of the management, the Union withdrew the case to pave the way for regularization of services of temporary employees including the workman.

However, contrary to the assurances of the management to regularize the service of the workman after receipt of permission from Govt., the management terminated the services of the workman *w.e.f.* 1.12.2000 and he continues to be unemployed till date even after receipt of permission from the Govt. It is submitted that the Govt. accorded the permission to the Bank. The management signed a tripartite agreement with All India Bank of Baroda Employees Federation before the Regional Labour Commission (C) Mumbai in March 2008 for Regularization of the Services of the temporary employees. A copy of the agreement is enclosed and marked as Annexure C. However while the management has regularized the service of several temporary employees, the Management has not honored its assurance given before the Regional Labour

Commissioner Mumbai on 25.09.2000 to regularize the services of the workman. The workman had worked for more than 240 days in a calendar year. He worked in the Bank from September 1992 to November 2000 regularly when his services were terminated without any notice.

That the action of the management in terminating the services without any notice is arbitrary, unjust, unfair and harsh. The Bank is a Public Sector bank and it is unfair on the part a public sector bank to exploit the workman by engaging them on temporary basis against permanent vacancies and exploiting them by not making full payment of salary as per rules and depriving the workman of permanent employment.

On the basis of contents mentioned in aforesaid paragraphs Workman Prayed that it may be pleased to direct Bank to take back the employee in its services with retrospective effect from 10.12.2000 with full back wages and with other consequential benefits. This Hon'ble Tribunal may further pass any other order/orders as the tribunal may deem fit in the facts and circumstances of the case.

In Reply written submission to workman management filed written submission as follows:—

1. In brief the case of the workman was that he was engaged by the bank in September 1992 as a Peon on temporary basis he further alleged that there were number of other persons who were also employed by the management on temporary basis in various branches of the bank.
2. It is further case of the workman that he worked with the bank on temporary basis upto 30.11.2000 though in March 1996 there were vacancies in the bank and the management of the bank taken the interview of the candidate for permanent recruitment and he was also one of the candidate.
3. That he was not appointed despite the facts that he was interviewed however even after March 1996 he continued in the services upto 30.11.2000 on a temporary basis. On these allegation an industrial dispute has been raised by the union and the federation of the bank. It is further alleged that during the conciliation proceeding held on 25.09.2000, the representative of the bank management stated that the workman was continued to be engaged as temporary peon and the matter has been under consideration to regularize the services of the temporary employees after taking the permission from the Govt. of India and such the conciliation proceedings pending before the conciliation officer was withdrawn by the Union of the Bank.
4. That it is further case of the workman that his services were terminated by the branch manager on



01/12/2000 in Gross Violation of section 25F of I.D Act and even no notice or notice pay in lieu of notice or retrenchment compensation was given at the time of retrenchment by the management.

5. It is the case of the workman the he had completed more than 240 days of continues service in the 12 calendar months preceding the date of termination of service. On these allegations the present case has been filed by the workman in his individual capacity.
6. The bank had filed their written statement and taken the following preliminary objections:—
  - i. Without prejudice to the submissions dated 05.04.2006, 20.07.2006 and 24.08.2006 and notwithstanding that the Hon'ble Tribunal orders dated 20.7.2006 and 20.08.2006 are per se arbitrary and violative of law, the opposite party begs to further submit as under:—
  - ii. At the outset it is stated that the purported corrigendum (dated 17.07.2006), issued by the government nearly one and half year of the making of original order of reference on 20.01.2005, is virtually a fraud on law and abuse or misuse of power in as much as that by the aforesaid purported corrigendum no clerical or typographical error has been sought to be corrected or rectified by the government in the original terms of reference but, in the garb of corrigendum the government has inserted and added fresh additional material in the original terms of reference which amount to super cession thereof without any power to do so.
  - iii. Consequently the purported corrigendum is ultra vires the government's power. In that view of the mandate of law, this Hon'ble Tribunal may not therefore validly undertake adjudication of the amended reference dispute disguised by the government as corrigendum.
  - iv. The Hon'ble Tribunal's assumptions that "the instant reference dispute is an 'individual dispute' (within the ambit & scope of Sec.2-A of the ID Act) (briefly, the Act) sponsoring of which by the union was not necessary in view of amended sec. 2-A" are patently erroneous, misplaced and fallacious on facts and law in as much as that (i) on a bare perusal of the order of reference it is explicit that the dispute referred by the government for adjudication of this Hon'ble Tribunal is not an 'individual dispute' made at the instance of the workman within the ambit & scope of sec.2- A of the act but is a collective industrial dispute between the union and the management of the Bank who are arrayed as parties to the reference dispute

as envisaged u/s 2(k) of the act and this is so because the dispute or difference as to regularization could not have been raised and referred for adjudication at the instance of the workman u/s 2-A of the act unless and until the same was espoused by the union or substantial number of employees of the Bank as is the instant case in which the parties to the reference are the union (BOBEU) and the Bank, also evidenced by the Tribunal summoning the parties to the reference order. The Tribunal's assumption that section 2-A of the act has been amended is also misconceived and erroneous, the section continues to be the same in substance and content since its insertion in the act in the year 1965.

- v. That the union (BOBEU) which is a party to the reference dispute, has neither filed it pleading *i.e.* statement of claim as required of it under rule 10-B of the Industrial Disputes (Central) Rules, 1957, or in compliance of government's directives contained neither in the order of reference nor also by orders of this Hon'ble Tribunal. Nor has the union appointed its representative to appear on its behalf; the entire proceedings held or would be held will therefore invalid.
- vi. The reference order is bad in law incapable of adjudication as it has been belatedly made, the subject matter of the dispute, if any, is of antiquity and thus may prejudice the management's interest.
- vii. In view of the above contentions the Hon'ble Tribunal is a forum non jurist to hold adjudication of the terms of reference *vide* invalid order of reference. Any proceedings if any that may be held by the Hon'ble Tribunal would be incompetent and unauthorized and thus invalid and any award if made by the tribunal would equally be incompetent, unauthorized and invalid.
- viii. The captioned union raised an industrial dispute for absorption of 7 temporary employees and Sh. Virender kumar was one of them.
- ix. The Employment Exchange sponsored the names of seven persons including Virender for recruitment of subordinate staff against indent place by the Bank in March 1996. Accordingly, he alongwith other sponsored candidates were interviewed by the panel constituted for the purpose. Sh. Virender kumar was not found fit for the post of subordinate staff by the

- interview panel, consequently his further engagement was discontinued by the Branch Manager.
- x. In View of the fact situation mentioned above the continued engagement of Virender by the branch manager of Sansad Marg Branch of the Bank did not amount to termination of his services in any manner whatsoever because he did not have an appointment in the Bank capable of being continued in Law. It is reiterated that stoppage of engagement of Virender did not amount to termination of his services as he did not have any appointment, as has been erroneously assumed by the Government, the stoppage of deployment of Virender was not in infraction of any provision of law, was neither unjustified nor improper nor designed but was bonafied. The Bank herein being Government of India's undertaking in the public sector and also a "State" under Article 12 of the constitution is bound to obey the Constitutional mandate & obligation under statutory provisions. In replacing the workman Virender by a duly selected appointee the management complied with its statutory obligation.
- xi. In the facts & circumstances stated above it is abundantly held that the order of reference is incompetent and invalid as the government has made the same in the specified terms without application of mind in that the terms do not relate to the real subject matter *i.e.* the nature of deployment or engagement of the workman Virender —Did he hold any appointment in the Bank.
- xii. That the management's action/decision, not continue to engage the workman Virender as a duly wager on the posting of a duly appointed person *i.e.* replacement of the workman Virender by a duly appointment person, Virender having failed to successfully complete in the selection process, has the approval of recent pronouncements of law by Hon'ble Delhi High Court and Hon'ble Supreme Court some of which are mentioned below:—
- a. Nagar Mahapalika (Now Municipal Corporation) Vs. State of U.P. & Others Jt. 2006 (5) SC 318; HELD; "appointment made in violation of the statutory provisions and contrary to article 14 and 16 being illegal, the termination of the services of such persons cannot be considered to be bad in law".
- b. Secretary, State of Karnataka & Others Vs Uma Devi & Others 2004 (7) SCC 132; HELD  
"Public employment in a sovereign socialist secular democratic republic has to be set down by the Constitutional and the law made there under. Out constitutional scheme envisages employment by the government and its instrumentalities on the basis of a procedure established in that behalf."
- c. Pankaj Gupta & Others Vs State of J&k, 2004 (8) SCC 353.
- d. State of Himachal Pradesh Vs Suresh Kumar Verma, 1996 (1) SCR 972 HELD;  
"a person appointed on daily wage basis is not an appointee to a post according to Rules.
- e. Ashwani Kumar Vs State of Bihar, 1996 Supp. (10) SCR 120;
- f. State of Uttar Pradesh Vs. U.P. Madhyamik Shiksha Parishad Shramik Sangh, 2004 Lab IC 879, All HC HELD;  
"Daily wage casual workers engaged according to exigencies of work in office cannot claim regularization"
- g. R.B. Bhose & Others Vs. Chief Manager, Bank of Baroda Special Civil Application No. 642 of 1996 under Articles 14, 16, 226 & 227 of the constitution Gujarat HC, date 31.07.1996 HELD;
- h. Delhi Development horticulture Employees Union vs Delhi Administration; 1992 (A) SCC 99.
- i. State of Haryana Vs Piara Singh, 10/992 (4) SCC 118.
- j. Amreli Municipality Vs Gujrat Pradesh Municipal Employees Union 2004 (107) FJR 105 Guj. HC FB HELD;  
"No person can be regularized if he has entered service without following selection process under title of daily rate employee. Labour courts and Tribunals have no jurisdiction to pass award regularization of services of employees without there being no post.
- k. State of U.P. Vs Neeraj Awasthi, 2006(1) SCC 667; HELD;  
"Regularization cannot be a mode of appointment."

1. Airport Authority of India Vs. Dharampal, 2006 III AD 701 Delhi HC function and can only be ordered by competent authority and not be court;
- m. Eagle fashions Vs. secretary labour 1999(81)FLR Delhi HC 887 DB.
- xiii. Before giving parawise reply to the statement of claim, it would be expedient in the interest of justice to bring on record the prevalent factual and legal position for proper adjudication of the controversy in issued and to enable the court of appreciate the controversy in its correct perspective.
- xiv. The appointment in any post in Bank is governed by certain statutory rules and regulations in force from time to time. Any appointment in the subordinate cadre has to be made by an authority competent to make such appointment within sanctioned vacancies and also subject to fulfillment of eligibility criteria's for such appointment. In the normal course, employment of persons in sub-staff cadre in the bank can be done only through employment exchange. If only, no suitable candidate is available and a certificate is issued by the Employment Exchange to this effect, other sources of recruitment are to be considered the statutory bodies an government organizations should adhere to the rules and that mere notification to the employment exchange is just not enough but the vacancy should also be filled by the candidates sponsored by the employment exchange. It is mandatory by the Bank to abide the aforesaid directives of the Central Government.
- xv. There are catena of judgments pronounced by various courts in this behalf that if the genesis itself I infraction of the rules, if it is violation of the provisions, claim of regularization or reinstatement cannot be held as valid and legal, Regularization cannot be claimed as a matter of right. An illegal appointment cannot be legalized by taking recourse to regularization. What can be regularized is an irregularity and not an illegality.
- xvi. It is settle legal preposition that any appointment made against the rules, violate the public policy and thus being void cannot be enforced.
7. It is further case of the management that the workman Sh. Virender was never employed by the bank. He was only engaged as a Daily Wager at its Parliament Street Branch, New Delhi by the branch manager from time to time accordingly to the need of the branch.
8. The employment in the Bank is the public employment covered by Employment under the State and the Constitution of India under Article-16 guarantees the equality for such employment. Employment Exchange is the only agency where any person seeking employment can register himself and reference to employment exchange guarantees the equality of opportunity of reemployment.
9. The reservation policy of Government of India framed in consonance with the Constitution of India under no circumstances can either be ignored or diluted by any constituent. In the recruitment procedure particularly in a Government of India Undertaking like Bank, is it mandatory for compliance of the reservation criteria in respect of SC, ST, OBC, Phy Handicapped and ex-serviceman as prescribed by Government from time to time of recruitment. Non-compliance of the same would amount to deprival of the constitutional safeguards provided to weaker sections of the society.
10. It is submitted that the provisions of Industrial Dispute Act cannot override the constitutional rights of the persons who have been selected by the stop-gap arrangement cannot be read so as to defeat the constitutional rights as otherwise it would defeat the right of equal opportunity envisaged under Article 16 (1) of the constitution. It is, therefore, submitted that's the so called protection under chapter (9a) of the Industrial Disputes Act would not operate under such circumstances and the candidates under instances mentioned above could claim no preferential or statutory rights over others who are appointed after complying with the process and selection.
11. It is further submitted that for a post where there are recruitment rules, the recruitment shall be in accordance with the rules. It cannot be said that the person who is engaged purely on temporary basis as a stop-gap arrangement without following the proper procedure would get the right to be appointed permanently.
12. If the person who has been engaged as a stop-gap arrangement is made permanent merely on the ground that he has worked in the past for some time, then the entire rules could be easily be passed, by interested person.
13. If such demand is conceded, the above individual who is to selected as per the rules would get the benefit of being appointed to the post without due eligibility or without facing any competition from eligible candidates which could be unfair unjustified.

14. That the Union (BOBEU) raised an industrial dispute and initiated conciliation proceedings in respect of a workman service of the Bank. The Management of the bank resisted the union's demand before the Regional Labour Commissioner (C) New Delhi and Bombay. On the failure of conciliation proceedings the Central Government made an order of reference which is registered as I.D. Case No. 4/2005 in this Tribunal. Copies of the Union's Application/SOC filed before the conciliation officer, management's reply thereto and the Union's rejoinder etc. are appended herewith as Annexure-1. Colly. That having registered the reference as I.D. 4/2005, the Hon'ble Tribunal issued notice of motion to the management of the bank and the union above named being parties to the order of reference and industrial dispute. Despite Government's direction in the order of reference and this Hon'ble Tribunal notice the opposite party union has not entered appearance and filed by on Sh. Virender and is on the statement of claim which is filed by one Sh. Virender and is on the file of the Hon'ble Tribunal is incompetent and invalid and ought not to have been taken on record by the Hon'ble Tribunal much less directing the management to file its written statement in reply thereto. It is further submitted that the workman Virender cannot be deemed to be a party to the reference because by virtue of the terms of reference neither he could raise a dispute about his regularization nor could the Government make the reference at his instant in that behalf.

15. A long line of judicial dicta, since the Hon'ble Supreme Court's decision in the case of Central Provinces Transport Services Vs. Raghunath Gopal Patwardhan (1957 ILLJ 27 SC) had firmly established that in view of principle and policy of collectively bargaining an individual dispute could not *per se* be an industrial dispute but could of course become one only if it was sponsored and espoused by a trade union or a substantial number of workman of the establishment as a collective dispute. Since this position of law created hardships for whose individual workman who were discharged, dismissed retrenched or whose service were otherwise terminated and who could not find support of a union or appreciable number of workman of the establishment to espouse those workman's cause, the Central Government, realizing the hardships of individual workman amended the Ld. Act, 197 by engrafting definition of Industrial Dispute in Section 2(K). Section 2-A has thus done away with, though of course to a limited scope, the requirement of espousal of the individual dispute for converting the same into industrial dispute in four excepted nature of case. Any other type of dispute e.g. promotion etc. concerning an individual does not, however fall within the contemplation of section 2-A and it will thus be continued to be governed by the principle of law in connection with conversion of individual dispute into an industrial dispute by espousal.

16. In Ram Prasad Vishwakarma Vs. Industrial Tribunal [1996 I ILLJ 504 (507)] SC, the Hon'ble Supreme Court held that where individual dispute becomes an industrial dispute by virtue of being sponsored and espoused by a trade union or considerable number of co-workers, individual workman is at no sage a party to industrial dispute independently of the union. The principle of law has therefore being that when an industrial dispute is raised by a union or a group of workman in respect of the grievance of an individual workman and reference is made by the Government at the instance of the Union, the dispute is not between the individual workman and the management but is between the management and the workman of the establishment. Following Hon'ble Supreme Court's pronouncement of law in Ram Prasad Case (supra) two different Division Benches of Patna High Court in the case of Dr. Chandra Kala Jha Vs. Sone Vallet Portland Cement Co. Ltd. 1962 II LLJ 375 and Eastern Manganese and Mineral Ltd. Vs. Industrial Tribunal (1968 II LLJ 817) held that when an industrial dispute is raised and espoused by a union or a group of workman in respect of grievance of an individual workman and the reference is made by the Government at the instant of the union arrayed as a party dispute, the dispute is not between the union and the management because when an individual workman's cause is espoused by a union or community of workman then in law the workman concerned is not a party to the dispute independently of the union which has espoused his cause. A Division Bench of Orissa High Court has also held to the same effect in the case of Kanai Chandra Ganguly Vs. CGIT held to the same effect in the case of Kanai Chandra Ganguly Vs. CGIT (1971 Lab. L.C. 569)

17. Further more, from the words, "notwithstanding that no other workman nor any union of workman is a party to the dispute" in section 2-A of the Act it is explicit that a trade union or co-workman are not precluded from sponsoring an individual dispute relating to discharged, dismissal, retrenchment, etc. and converting it into a collective industrial dispute as envisaged u/s 2(k) of the act as has been done in the instant case. Thus after insertion of section 2-A in the Act, an individual workman's dispute may either ipso facto be deemed to be an industrial dispute raised by the workman himself in respect of his termination etc. or it may be espousal of his dispute by a trade union or body of workmen, be also become and industrial dispute, in which case the workman being not party to dispute independently of the union which raised and sponsored his cause. There is thus a pertinent distinction between these two type of disputes, in the former him and his employer while in the later, the dispute is between the union of workman as body or a class and their employer. In other words the first is case of an individual industrial dispute fiat of legal fiction of sec 2-A while the later is collective industrial dispute as defined u/s 2(k) of the Act. The definition of industrial dispute u/s2(k) of the Act expressly



states that not disputes or differences of all sorts but only those which bear upon relationship of employer and workman are contemplated by virtue of the concept of collective bargaining or community of interest because a dispute touching the rights of an individual workman had never been intended and held by the Government and the law courts to be the subject of adjudication under the Act till the insertion of Section 2-A at limited extent.

18. That the complainant to prove his case had filed evidence and the evidence of Shri R.L. Virmani asserting the allegation made in the statement of claim.

19. The complainant and his witness Shri R.L. Virmani were cross-examined by the bank counsel. The Complainant in his cross examination had admitted that his dispute was raised by BOB Employee union with management of Bank of Baroda Employee Union was arrayed as a party to the dispute in the reference order and not him.

20. There were two references by the Government in the present matter on 05.01.2005 and dated 12.07.2005 and in both the references the terms of reference are different. The reference dated 12.07.2005 was issued by the Government at the instance of employee union as per his case he had been impleaded as a party in the present case after his application was allowed since no notice of the present proceeding were received by him of the present proceedings from the court, however there was no application in the file to implead the petitioner as a party. He had further stated that the Employee Union had orally told him that they are not interested to contest his case. He further admitted that he was engaged by the branch manager at the instance of Shri R.L. Virmani General Secretary of the Union. He had further admitted that he was engaged as daily wager. He had further admitted that in March, 1996, he was recruit on regular basis as a sponsored candidate of employee Union. He had further admitted that the sponsored candidate were interviewed by the management of the bank and the bank had selected only 6 or 7 candidates who were appointed and he was not appointed and as such he approached the Union, who raised his dispute about regularization of the service and they never raised any dispute about regarding termination of his services.

21. He had further admitted that he had never applied for employment however he was interview. It is further admitted case of the workman that he was never medically examined. He even did not identify the signatures on the documents exhibit WW-1/1 and WW-1/2 to WW-1/8. He had further stated that the management never used to get my signature at the time of disbursing wages to me.

22. So from the aforesaid cross-examination the workman fails to prove any documents and even in the present case he was not a party. The cross-examination of Shri R.L. Virmani also conducted by the bank counsel which is as under:—

"I was the General Secretary of Bank of Baroda Employees Union upto Feb, 2005. When I was the General Secretary of the Union, the Union raised the dispute about the absorption of Shri Virender and others who were working as temporary in different branches of the Bank in Delhi.

It is correct that the dispute of absorption of the workmen was initially raised by the union before the RLC Delhi which was subsequently transferred to Bombay at the instance of Management.

The Management has sought the transfer of the dispute to RLC Bombay as large number of similar dispute was pending consideration before the RLC Bombay.

It is correct that the Management had sent requisition to the employment exchange Delhi for sponsoring eligible persons for recruitment as peons and the employment exchange had sponsored four candidates including the workmen concerned Shri Virender for interview and selection as a peon.

I state that the selection process though the workmen Shri Virender was selected but no appointed.

I was orally told by the management that the workman Shri Virender was selected and that his appointment letter will be released later and in the mean time he will be allowed to work in the Bank on the same post on which he was working.

It is correct that out of temporary persons who were sponsored by the employment exchange alongwith the workman Shri Virender and were interviewed, three were given appointment letter.

I do not have any documentary evidence to substantiate my above contention that Shri Virender was selected and the management has promised me to appoint Shri Virender.

Order of reference was made by the government in the first instance dated 05.01.2005.

It is correct that the union has not filed statement of claim on the above reference as on receipt of reference dated 05.01.2005 from the Government of India, I as the General Secretary of the Union took up the matter with the Government that reference was not correct as the services of the workman Shri Virender were illegally terminated by the management and therefore the reference should be amended. The government issued corrigendum dated 12.07.2005 amending the terms of reference originally made.

Since, I was not the General Secretary of the Union after 2005 therefore I cannot say whether the union filed the statement of claim or not, however, the union continue to exist and Mr. C. S., Dahia is the General Secretary of the Union.

It is correct that I am aware of the eligibility norms for the recruitment of the sub-staff like peons of the Bank and also the procedure of recruitment.

One of the eligibility norm for considering for employment in the Bank is that he or she minimum 7th pass, not less than 18 years of age, Normally of persons in sub staff is done form out of those who are sponsored by the employment exchange but some time when the persons working as temporary for 90 days or more are also considered for employment internally by virtue of terms of first bi-parties settlement.

No application by Shri Virender for employment in the Bank was given by him because he was already working as a temporary and his name was sponsored by the employment exchange to the Bank.

It is incorrect to suggest that Shri Virender was working as a daily wager on ad-hoc basis.

It is incorrect that the services of Shri Virender Kumar were dispensed with when one of the three regular appointee were appointed.

Shri Virender worked from March, 1996 to November, 2000 whereas the regular appointees were appointed in March/April, 1996.

There is no documentary evidence that Shri Virender was issued any appointment letter appointing him as a peon on temporary basis. He was orally appointed.

The branch manager had asked Virender to work as a peon on the instruction of Zonal Head.

The Zonal Manager had personally told me that he would instruction to the Branch Manager to engage Virender.

I have not read the statement of claim filed by Shri Virender but he has told me that he had filed his statement of claim to his tribunal as the union not filed its statement of claim."

23. From the above cross-examination of the workman witness it is clearly established that workman failed to prove his case and as such the present claim petition is liable to be rejected out rightly with cost.

It is, therefore most respectfully prayed that the present claim petition of the complainant be dismissed with exemplary cost.

In the light of contentions and counter contentions I perused the settled law of Hon'ble Supreme Court on the point of reinstatement and grant of back wages which shows that reinstatement is not a necessary consequence wherever termination is held illegal. Depending upon the facts of each case a suitable compensation can be awarded.

In Assistant Engineer, Rajasthan Dev. Corporation and Anr. Vs. Gitam Singh (2013) II LLJ141 Hon'ble Supreme Court has held that reinstatement of workman with continuity of service and 25% back wages was not proper in the facts and circumstances of the case and the compensation of Rs. 50,000 (Rs. Fifty Thousand Only) shall meet the ends of justice. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Anr. AIR 2009 Supreme Court 3004, Hon'ble Supreme Court held thus "the award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded." In catena of Judgments, Hon'ble Supreme Court has taken a view that reinstatement is not automatic, merely because the termination is illegal on in contravention of S-25-F of the Industrial Dispute Act. In Talwara Co-operative Credit and Service Society Limited Vs. Sushil Kumar (2008) 9 SCC 486, Hon'ble Supreme Court held thus, " grant of relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic."

Workman of the instance case was not appointed by following due procedure and as per rules. He had rendered service with the respondent as a casual worker, thus. Compensation of Rs. 50,000 (Rs. Fifty thousand only) by way of damages as compensation to the workman/claimant by Management after expiry of period of limitation of available remedy against Award. That will meet the ends of Justice.

Thus reference is decided in favour of workman and against Management.

Award is accordingly passed.

Dated: 31/10/2013

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 2 दिसम्बर, 2013

**कांआ 2665.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ सं. 149/98) प्रकाशित करती है जो केन्द्रीय सरकार को 02.12.2013 को प्राप्त हुआ था।

[सं एल-12012/268/1997-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 2nd December, 2013

**S.O. 2665.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 149/1998) of the Cent. Govt. Indus. Tribunal-cum-Labour Court

No. 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of Allahabad Bank and their workmen, received by the Central Government on 02/12/2013.

[No. L-12012/268/1997-IR (B-II)]  
RAVI KUMAR, Section Officer

# ANNEXURE

## CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, DELHI

**PRESENT:-**Shri Harbansh Kumar Saxena

**ID No. 149/98**

Sh. N.K. Tekriwal

Versus

Allahabad Bank

# AWARD

The Central Government in the Ministry of Labour vide notification No. L-12012/268/97 IR(B-II) dated 20/07/1998. Referred the following Industrial Dispute to this tribunal for the adjudication:—

"Whether the action of management of Allahabad Bank in not including the name of Sh. N.K. Tekriwal in the list of eligible candidates for the post of Computer Operator passing the aptitude test conducted by the management on 07.04.1996 is legal and justified. If not, to what relief the said workman is entitles?"

On 31/08/1998 reference was received in this tribunal. Which was register as I.D. No. 149/98 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On the Basis of Contents of Claim Statement filed on 22/12/98. He prayed as follows:—

Sh. Tekriwal has qualified in the aptitude test of computer operator and deserve posting as computer operator since 1996 with allowance and other benefits applicable to computer operators as per rules/Precedence.

On the basis of contents of written statement filed by Management on 4/12/2000. Management prayed as follows:—

Sh. Tekriwal was not eligible for posting as computer operator for a period of two years from the date of his inter area transfer, effected at his own request, he was not posted as Computer Operator for the period 16.7.96 to 15.07.98. It is therefore prayed that the reference be decided in favour of the Management and against the workman.

On the basis of contents of replication filed by workman/claimant. He prayed as follows:—

The workman was eligible for posting of computer operator and he was not under any bar for the said posting as the said mutual transfer does not reflect any indication in accordance with the memorandum settlement dated 22.04.98 and subsequent selection through aptitude test on All India basis hence the denial of posting of computer operator of the workman is deliberate illegal arbitrary discriminatory and prejudicial and the management be directed to give him the posting of computer operator with retrospective effect with all benefits and the prayer of the management is dismissed without any consideration with cost.

On the basis of pleadings of parties my Ld. predecessors on 9/10/2006 framed following issues:—

(1) As per terms of reference?

(2) To what relief the workman is entitled to?

After framing issues 6/12/2006 was fixed for evidence of claimant. Since then case was fixed for evidence of claimant upto 25/07/2013 but he adduce no evidence.

On 25/07/2013 Claimant/Workman through his advocate express his desire to withdraw the ID on next date that is 27/08/2013.

On 27/08/2013 workman not turn up nor moved withdrawal application. Fixed 26/09/2013 for moving withdrawal application.

On 26/09/2013 workman moved withdrawal application which is not opposed by A/R of the management.

Relevant contents of withdrawal application are as follows:—

I am the claimant in the above Industrial Dispute which is pending in the Hon'ble Tribunal. That I want to withdraw this said dispute due to my present circumstances.

In view of the above it is prayed that the said dispute may be closed as withdrawn and for the same I shall remain oblige.

Your faithfully

Date 25.07.2013

(N.K. TEKRIWAL)

Through : R.S. Saini, Advocate

In these circumstances it appears that workman/claimant is not interested in further proceeding of the case. Due to which in this old ID is not adducing evidence in support of his claim.

Due to his non-production of evidence in support of his claim the tribunal has no option except to conclude the proceeding. Moreover claimant/workman has expressed his desire to withdraw the ID.

In these circumstances it is fit case in which no dispute award can be passed. Which is according passed.

Dated : 27/09/2013

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2013

का.आ. 2666.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 3/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.12.2013 को प्राप्त हुआ था।

[सं एल-12012/66/2008-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd December, 2013

**S.O. 2666.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 3/2009) of the Industrial Tribunal, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 03/12/2013.

[No. L-12012/66/2008-IR (B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, BHUBANESWAR

#### PRESENT:

Shri J. Srivastava,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

**Industrial Dispute Case No. 3/2009**

**Date of Passing Award-20th May, 2013**

#### Between :

1. The Chief General Manager,  
State Bank of India, LHO,  
Pt. J.N. Marg, Bhubaneswar (Orissa).
2. The Branch Manager, State Bank of India,  
Tikabali, At./PO. Tikabali, Dist. Phulbani,  
Orissa.

....1st Party-Management.

And

Their workman Shri Abhimanyu Behera,  
At. Hatapada, P.O. Linepada, Dist. Kandhamal

....2nd Party-Workman.

#### Appearances:

Shri P.K. Mohanty ... For the 1st Party-  
Authorized Representative Management.

Shri Abhimanyu Behera ... For himself the 2nd  
Party-Workman.

#### AWARD

The reference with regard to an industrial dispute existing between the management of State Bank of India and their workman has been sent by the Government of India in the Ministry of Labour under the provisions of clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 *vide* Letter No. L-12012/66/2008-IR (B-I) dated 03.02.2009.

2. The dispute under reference has been mentioned in the schedule of the letter of reference which is reproduced below.

Whether the action of the management of Chief General Manager, State Bank of India, Orissa Circle in terminating services of Shri Abhimanyu Behera, ex-temporary messenger *w.e.f.* 1993 without complying provisions as required under the I.D. Act, is legal and justified? To what relief is the concerned workmen entitled?

3. The 2nd Party-workman has filed a brief statement of claim mentioning that he had served as temporary messenger at Tikabali Branch of State Bank of India for a period of 65 days in the year 1988 and 1989 and as a daily wage labour for a period of 176 days from 1990 to 1993. He had also appeared in the interview for the post of messenger and was selected. His name was enlisted in the panel, but could not get appointment. He has therefore claimed Rs. 10 lakhs for maintenance of his family and livelihood.

4. The 1st Party-Management in its written statement has stated that the claim of re-employment after lapse of several years is a stale claim and therefore the reference in this regard is vague in law and liable to be rejected. The disputant workman had worked intermittently. He has not worked continuously for 240 days. As per settlement between the management of State Bank of India and All India State Bank of India Staff Federation the disputant workman was offered an opportunity for permanent



appointment. He appeared in the interview. His name was empanelled in the wait list. The panel had expired on 1.4.1997. Therefore he could not be appointed. Some of the wait-listed candidates including the disputant workmen filed applications before the Hon'ble High Court of Orissa for regularization of their services which were dismissed on 15.5.1998. The said judgement was challenged before the Hon'ble Supreme Court of India in S.L.P. No. 3038/99, but the Hon'ble Supreme Court upheld the judgement of the Orissa High Court. Now the same issue cannot be re-agitated again. In pursuance of the order of the Hon'ble High Court of Orissa the disputant workman along with ten other workmen submitted a representation before the Chief General Manager, State Bank of India who after affording a personal hearing to them rejected their representations by passing a reasoned order on 26.3.2007. Hence the disputant workman has no right to claim appointment or re-appointment after expiry of the panel nor any compensation. There is no violation of any provisions of the Industrial Disputes Act.

5. On the pleadings of the parties following issues are framed.

### ISSUES

1. Whether the action of the Management of Chief General Manager, State Bank of India, Orissa Circle, in terminating services of Shri Abhimanyu Behera, Ex-temporary Messenger *w.e.f.* 1993 without complying provisions as required under the I.D. Act is legal and justified?
2. Whether the disputant workman is entitled for appointment on the ground stated in his statement of claim?
3. To what relief the concerned workman is entitled?

6. The 2nd Party-workman Shri Abhimanyu Behera has filed his own affidavit in evidence and relied upon for documents marked as Ext.-1 to Ext.-4.

7. The 1st Party-Management has examined Shri Narendra Nath Hembrum, Branch Manager of Tikabali Branch of State Bank of India but he was not cross examined by the 2nd Party-workman due to his absence. The 1st Party-Management has filed certain documents in support of his case, but has not exhibited any of those documents.

### FINDINGS

#### Issue No. 1

8. The 2nd Party-workman has himself brought out a case that he had worked for 65 days in the year 1988 and 1989 and for 176 days in the year from 1990 to 1993 as a temporary messenger/daily wage labour. In his affidavit he has stated the same thing, but has simply said that there is no document in support of the work done as daily wage labour in the years 1990 to 1993 as all the documents were set on fire.

9. The 1st Party-Management on the other hand has stated that the disputant workman had not worked continuously and uninterruptedly for 240 days. He had worked intermittently as a daily wage. Even if the number of days the disputant workman is stated to have worked are summed up, the total comes to 241 days, but this runs in several years from 1988 to 1993. Ext.-3 is the photostat copy of Bank certificate which shows that the disputant workmen had worked for 25 days in the year 1988 and for 40 days in the year 1989. There is no documentary proof about the work said to have been rendered from the years 1990 to 1993 amounting to 176 days. The oral evidence of the disputant workmen in this regard cannot be taken as sufficient. The Management's witness Shri Narendra Nath Hembrum has categorically stated in his evidence that Shri Behera had not worked for 240 days continuously and uninterruptedly. He has also denied that Shri Behera had worked for 176 days in his Branch from 1992 to 1993. There is neither any proof nor any allegation that the disputant workman was ever terminated or retrenched from service by the 1st Party-Management. Admittedly he was a temporary messenger/daily wage worker. Therefore there was no legal necessity to terminate his service. When his services were not required he was not called upon to serve. The mandatory provisions as those enshrined under section 25-F or others of the Industrial Disputes Act are not required to be complied with in the case of the 2nd Party-workman. As such the action of the 1st Party-Management is dispensing with the services of the 2nd Party-workman is quite legal and justified. Issue No. 1 is decided in favour of the 1st Party-Management.

### ISSUE NO. 2

10. As the services of the 2nd Party-workman were of temporary nature and he had not rendered 240 days continuous and uninterrupted service under the 1st Party-Management he is not entitled for continuance in service or re-appointment on compassionate ground or on any ground under law. As such the disputant workman is not entitled for re-appointment. Therefore his issue is decided against the 2nd Party-workman.

### ISSUE NO. 3

11. From the conclusions derived under in Issues No. 1 and 2 the disputant workman is not entitled to any relief. His claim is rejected.

12. The reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2013

का०आ० 2667.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) कि धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 131/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/12/2013 को प्राप्त हुआ था।

[सं एल-12012/320/2002-आई आर (बी-1)]  
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd December, 2013

**S.O. 2667.**—In pursuance of Section 17 of the Industrial Disputes Act, 1949 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 131/2003) of the Cent.Govt.Indus. Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India, Zonal Office, Shanker and their workmen, received by the Central Government on 03/12/2013.

[No. L-12012/320/2002 - IR(B-I)]  
SUMATI SAKLANI, Section Officer

#### ANNEXURE

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,  
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/131/2003                      Date: 18.09.2013.

**Party No. 1 :** The Dy. General Manager,  
State Bank of India, Zonal Office,  
Shankar Nagar, Raipur (CG) 492001.

*Versus*

**Party No. 2 :** Shri Kartik Ram Sahu, S/o. Late  
Daulal Sahu, Yadav para, Raja Talab,  
Raipur, Chhattisgarh - 492001.

#### AWARD

(Dated: 03rd August, 2011)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of the State Bank of India and their workman, Shri Kartik Ram Sahu, for adjudication, as per letter No. L-12012/320/2002-IR(B-I) dated 07.05.2003, with the following schedule.

"Whether the action of the Dy. General Manager, State Bank of India, Raipur (CG) in terminating the services of Shri Kartik Ram Sahu S/o. Late Daulal Sahu, Ex-messenger, main branch, Raipur is justified? If not, what relief is the workman entitled for?"

2. On receipt of the reference, notices were sent to the parties for filing of their respective statement of claim and written statement, in response to which, the workman, Shri Kartik Ram Sahu ("the workman" in short) filed the statement of claim and the management of the State Bank

of India, Raipur ("the party no. 1" in short) filed the written statement.

The case of the workman is that he was appointed temporarily in the post of messenger on daily wages basis by party no. 1 and he worked from 24.01.1997 to 31.01.1998 continuously and the party no. 1 issued certificates from time to time in that regard and in view of the Bi-partite settlement dated 27.10.1988 entered between the Central Office of the Bank and the All India State Bank of India staff federation, he became a protected workman and he was entitled for permanent absorption in the Bank and his services were not liable to be terminated and the party no. 1 conducted interview for all the protected workers in 1990 and the selected persons were wait listed for future absorption in the Bank's service and he was also selected in the said interview and his name was enlisted in the waiting list alongwith others and as he was to be absorbed in future, he was offered temporary appointment, but his services were terminated abruptly *w.e.f.* 01.02.1998 without assigning any reason and he had performed his duties for more than 240 days in a calendar year and got the status of a permanent employee, as per the provisions of section 25-B of the Act and in order to deprive him the benefits of regular employment, he was continued with artificial breaks in service and though posts were available, the party no. 1 did not absorb him and without any reason or show cause, the party no. 1 discontinued his services *w.e.f.* 01.02.1998 and the action of the party no. 1 in terminating his services amounts to retrenchment, but before the termination of his services, neither one month's notice nor one month's wages in lieu of notice, nor retrenchment compensation was given to him and as such, the action to terminating of his services is illegal, inoperative and invalid and as the mandatory provisions of section 25-F of the Act were not complied with, he is entitled for reinstatement in service with back wages and the action of the party no. 1 in terminating his services is arbitrary, capricious and unfair labour practice and he made representation to the Bank repeatedly for redressal of his grievancies, but without any result and the party no. 1 made appointment of fresh condidaties in the post of messenger, but he was not given employment, which was violation of the mandatory provisions of section 25-H of the Act. It is further pleaded by the workman that number of writ petitions were filed by number of persons, who had worked in different branches of the State Bank of India claiming fresh appointment of reinstatement, before the Hon'ble High Court of Madhya Pradesh at Jabalpur and the Hon'ble High Court on 24.08.1999 disposed of all the petitions by a common consent order and party no. 1 had agreed before the Hon'ble High Court in the said writ petition to follow the directions of the Hon'ble High Court and as his claim is similar to the writ petitioners as mentioned above, his claim is to be disposed of in the light of the directions given by the Hon'ble High Court. The workman has prayed for declaring the action of the party no. 1 to be

illegal and unlawful and to reinstate him in service with continuity and back wages.

3. The party no. 1 in its written statement has pleaded *inter-alia* that the appointment of the workman was on daily wages basis depending upon the exigency of the work and for specific period and discontinuation of such engagement did not amount of retrenchment in terms of section 2 (oo) of the Act and various settlements were entered into between the State Bank of India and Federation of SBI unions and by virtue of such settlement and for any other reason, the workman did not become a protected worker and did not become entitle of permanent absorption in the Bank. The further case of the party no. 1 is that the workman had been enlisted in the waiting list for absorption, but the said list lapsed on 31.03.1997, as per the terms of the settlement dated 13.07.1996 and as such, the persons, whose turn could not come by 31.03.1997 could not be considered for permanent absorption and in 1999, the workman had raised the dispute on the same facts and circumstances, which are the subject matter of the present dispute and the Government of India by its notification dated 20/24-01-2000, refused to refer the dispute, observing that, "The claim is frivolous as the disputant is not covered the definition of 'Workman' and also cannot claim immunity from the implications of the terms of the agreements reached between the management and the majority union. The matter has been judicially reviewed by the Hon'ble Courts of the Hon'ble Supreme Court of India in 1998 (SLP No. 11886-11888 of 1998 and the workman again approached the same forum for the same relief and once the matter has been finally decided by the Hon'ble Supreme Court, in 1998 (SLP No. 11886-11888 of 1998), nothing survives and the dispute is to be answered in its favour and seventeen temporary workmen raised the dispute before the ALC, Raipur, out of whom four being satisfied with the Bank's reply, withdrew their claims and five other workmen did not proceed against the Bank for one reasons or the other and out of remaining eight workmen, the case of the one workmen, Shri Kamal Soni was rejected by the Government and dispute of the rest seven workmen have been referred for adjudication for the reasons known to the concerned authorities and as the initial engagement of the workman was purely on temporary basis and the purpose for which, the workman was engaged was completed, the termination of his services was inevitable and the mere fact of completion of 240 days of work did not give the workman the status of permanent employee within the meaning of section-25-B of the Act and the workman was not given artificial breaks in service and it did not adopt any unfair labour practice and the services of the workman were not terminated on 01.02.1998 (wrongly mentioned as 05.02.1998 in the written statement) and the workman was appointed temporarily for specific period and for specific purpose and his services were terminated as per the appointment order and now, no work is available for him and in view of the appointment order,

there was no need to comply with the provisions of section 25-F of the Act and as such, its action cannot be said to be illegal and no fresh candidates were appointed by it as messenger and there was no violation of the provisions of section 25-H of the Act and as such, the workman is not entitled for any relief.

4. In the rejoinder, the workman has denied the pleadings made by party no. 1 in the written statement and has also reiterated the facts mentioned in the statement of claim.

5. In support of their respective claims, the parties have led oral evidence. The workman has examined himself as a witness in support of his claims. In his examination-in-chief, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. The workman has proved the intimation from the bank for giving consent for temporary appointment, the thirteen copies of his temporary appointment orders and the letter issued by the Bank regarding his disengagement *w.e.f.* 31.01.1998 as Exts. W-II to W-XV and the particulars of his service prepared by the union as Ext. W-XVI. In his cross-examination, the workman has admitted that in all his temporary appointment orders, it had been mentioned that his temporary appointment was due to be need of the Bank and by such appointment, he would not be entitled for permanent appointment. He has further admitted that Ext. W-XVI was issued by the workmen union of the Bank and he was not a member of the said union and in his affidavit, he has not mentioned the name of the person, who was newly appointed as a messenger and the date of such appointment.

6. One Shri A.C.S. Rao, an officer of party no. 1 has been examined as a witness on behalf of the party no. 1. He has also reiterated the facts mentioned in the written statement, in this evidence. In his cross-examination, this witness has admitted that the contents of Annexure-15 filed by the workman are true and he has no knowledge about the engagement of the workman in the bank, the number of days he worked and the date from which, he was not engaged in the bank and he has no personal knowledge about this case.

7. At the time of argument, it was submitted by the learned advocate for the workman that the workman worked with the party no. 1 *w.e.f.* 24.01.1997 continuously without any break up till 31.01.1998 and he had completed more than 240 days of continuous work in preceding calendar year of the date of his termination and as such, he had acquired the status of a permanent employee and his services was terminated *w.e.f.* 01.02.1998, without assigning any reason and the mandatory provisions of section 25-F of the Act were not complied with and the termination amounts to retrenchment and due to non-compliance of the provisions of section 25-F of the Act, such retrenchment is illegal and as such, the workman is entitled for



reinstatement with continuity of service and full back wages and after termination of the workman, the Bank made appointment of fresh candidates in the post of messenger, but did not give employment to the workman and thus violated the provisions sections 25-G and 25-H of the Act and Rule 77 of the Industrial Disputes (Central) Rules.

8. On the other hand, it was submitted by the learned advocate for the party no. 1 that the workman was appointed temporarily as a messenger looking to urgent need of work and he was duly considered by the party no. 1 for permanent absorption in the bank, as per the settlements and as such, he was interviewed and was put in the waiting list and as the waiting list lapsed on 31.03.1997, he could not be absorbed on permanent basis and he has no right for permanent absorption or re-appointment and therefore, the workman is not entitled for any relief. It was also submitted that as the engagement of the workman was purely on casual and temporary basis intermittently, due to administrative exigencies and need of work as messenger and the initial entry of the workman in the Bank being illegal and was not as per procedure for permanent staff, his termination cannot be termed as retrenchment and in view of the decisions of the Hon'ble Apex Courts, even if, it is found that the workman had completed more than 240 days of work, he is not entitled for regularization or reinstatement in service and as such, he is not entitled for any relief. In support of the contentions, reliance was placed by the learned advocate for the party no. 1 on the decisions reported in AIR 1997 SC 3657 (Himanshu Kumar Vidhyathi Vs. State of Bihar), AIR 1997 SC 3091 (Syndicate Bank Vs. Shankar Paul), 2006 SCC (L&S) 163 (State of U.P. Vs. Deshraj), 2006 SCC (L&S) 753 (Secretary State of Karnataka Vs. Umadevi) 2007 SCC (L&S)-346 (Gangadhar Pillai Vs. Seimens Ltd.), (2006) 1 SCC (L&S)-250 (UP State Brassware Corp Vs. Uday Narayan Pandey) (1997) 2 SCC-1 Ashwini Kumar Vs. State of Bihar and many others.

Keeping in view the principles enunciated by the Hon'ble Courts in the decisions, on which reliance has been placed by the parties, now, the present case at hand is to be decided.

9. The claim of the workman in this case is not based on the waiting list prepared by the Bank. According to the claim of the workman, he was appointed temporarily on 24.01.1997 and continued till 31.01.1998 and as he had completed more than 240 days of continuous work in a calendar year, the termination of his services without following the mandatory provision of the section 25-F of the Act is illegal and for that he is entitled for reinstatement in service.

The party no. 1 has denied that claim of the workman.

10. Perused the record including the statement of claim, written statement, oral and documentary evidence adduced by parties and written notes of arguments. It is

the admitted case of the workman that he was appointed temporarily. The documents filed by the workman show that he was engaged as a temporary messenger and not on permanent basis. There is nothing on record to show that the workman was appointed by following due procedure of appointment applicable to the Bank. So, it is clear from the evidence that the workman was working on casual basis as a temporary messenger.

On perusal of the documents, Exts. W-II to W-XV, filed by the workman, it is found that the appointment of the workman was purely on temporary basis for a specific period and he was being re-appointed on fresh basis from time to time by issuance of specific orders. It is also found from the documents that in the orders for temporary appointment, specific condition has been mentioned that the appointment of the workman was purely temporary in nature due to exigency of work and need of the Bank and the workman would not be entitled to claim permanent employment and the workman accepting the condition joined the temporary service and worked with party no. 1. It is also found from the documents that the temporary appointment was made by the Branch Manager of the Bank.

It is well settled by the Hon'ble Apex Court in a number of decisions including the decision of the constitutional Bench reported in AIR 2006 SC-1806 (Secretary State of Karnataka & Others Vs. Umadevi and Others) that, "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end, when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment, he is not entitled for reinstatement in service."

The documents filed by the workman univocally show that this appointment was coming to an end at the end of the contract and after 31.01.1998, his contract was not renewed and the same cannot be said to be retrenchment and as such, the workman has no right to claim reinstatement in service.

Applying the principles enunciated by the Hon'ble Apex Courts to the present case at hand, it is found that the provisions of section 25-F are not applicable to this case.

11. There is also no legal evidence on record to show that freshers were appointed as messengers by the party no. 1, after the termination of the services of the workman and the workman was not given employment and as such, it cannot be held that there was violation of the provisions of sections 25-G and 25-H of Act and Rule 77 of the Rules. Hence, it is ordered:



**ORDER**

The action of the Dy. General Manager, State of India, Raipur (CG) in terminating the services of Shri Kartik Ram Sahu, S/o, Late Daulal Sahu, Ex-messenger, Main Branch, Raipur is justified. The workman is not entitled for any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2013

**का०आ० 2668.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 78/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.12.2013 को प्राप्त हुआ था।

[सं० एल-12012/118/2008-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd December, 2013

**S.O. 2668.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 78/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 03/12/2013.

[No. L-12012/118/2008-IR (B-I)]

SUMATI SAKLANI, Section Officer

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR**

**Present:** Shri J. Srivastava,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE NO. 78/2008**

**Date of Passing Award-20th February, 2013**

**Between:**

The Asstt. General Manager,  
State Bank of India,  
Bapujinagar Branch,  
Distt. Khurda, Orissa,  
Bhubaneswar, (Orissa)

.....1st Party-Management.

And

Their workman Sri Mukti Kanta Lenka,  
Qr. No. VR-5/1, Kharvela Nagar, Unit-3,

Bhubaneswar. (Orissa)

2nd Party- Workman.

**Appearances:**

Shri Alok Das,  
Authorized Representative

For the 1st Party-  
Management.

None.

For the 2nd Party-  
Workman.

**AWARD**

The Government of India in the Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of State Bank of India and their workman under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 *vide* Letter No. L-12012/118.2008-IR (B-I) dated 13.10.2008 to this Tribunal for adjudication to the following effect:

"Whether the action of the management of State bank of India, Bhubaneswar Main Branch in terminating services of Sri Mukti Kanta Lenka *w.e.f.* 30.9.2004 is fair, legal and justified? To what relief is the workman concerned entitled?"

2. The 2nd Party-Workman has filed his statement of claim alleging that he had joined his services as a Messenger on 06.06.1988 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days' work in a calendar year, but despite completion of several years of continuous satisfactory service and putting in more than 240 days' work in each year he was not regularized, instead terminated and refused employment from 30.9.2004 by the 1st Party-Management without any written communication or payment of compensation. The 1st Party—Management in refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He therefore brought the matter into the notice of the C.G.M. and C.D.O. of the State Bank of India. L/H.O., Bhubaneswar. But on hearing nothing, he raised an industrial dispute before the Regional Labour Commissioner (Central) *vide* his letter dated 05.10.2007. Conciliation proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30.9.2004.

3. The 1st Party-Management in its reply through written statement has stated that the present dispute is misleading and misconceived in as much as the 2nd Party-workman had already raised a similar dispute along with 124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the Assistance Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st

Party-Management. In the said dispute the failure report was sent by the Asst. Labour Commissioner (Central), Bhubaneswar to the ministry of Labour who in turn referred the matter to this Tribunal for adjudication and the same is pending before this Tribunal being I.D. Case No. 7/2007. The name of the 2nd Party-workman is appearing at Sl. No. 21 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising individual dispute for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asst. Labour Commissioner (Central) while conciliating the individual disputes disregarded the direction of the Deputy Chief Labour Commissioner (Central) not to take any further action on the separate disputes raised by the same workers for the same cause of action. The allegation of the 2nd Party-workman that he had joined the Bank on 06.06.1988 and he was discontinued from service on 30.9.2004 is not correct. He was engaged intermittently on temporary/daily wage basis due to exigencies of work. When his services were no more required he was not engaged further. It is further denied that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party-workman has neither completed several years of continuous service in the Bank nor he has completed 240 days of continuous service in any calendar year preceding the date of his alleged termination. In order to give an opportunity for permanent absorption to the ex-temporary employees/daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and the Management of the State bank of India all eligible persons were called for interview. The 2nd Party-workman was also called for interview in the year 1993. But he was not found successful hence could not be appointed in the Bank. The Union or the 2nd Party-workman has never challenged the implementation of the settlement which has now gained finality. It is further submitted that some of the wait-listed candidates, who could not be absorbed in the Bank's service due to expiry of the panel on 31st March, 1997, filed Writ Petitions before the Hon'ble High Court of Orissa. But the Hon'ble High Court of Orissa by a common order dated 15.5.1998 passed in O.J.C. No. 2787/1997 dismissed a batch of Writ Petitions and upheld the action of the Management of the bank. This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC-3082/1999. Hence the above matter has attained finality and cannot be re-agitated. Since the services of Sri Lenka had allegedly been terminated in December, 1998 his claim has become stale by raising the dispute after ten years. it is a settled principle of law that delay destroys the right to remedy. Thus the present dispute is liable to be rejected on the above grounds.

On the pleadings of the parties following issues were framed:—

## ISSUES

1. Whether the action of the Management of State bank of India, Bhubaneswar main branch in terminating services of Shri Mukti Kanta Lenka with effect from 30.9.2004 is fair, legal and justified?
2. Whether the present reference of the individual workman during the pendency of the I.D. Case No. 7/2007 before this Tribunal on the same issue is legal and justified?
3. Whether the workman has worked for more than 240 days as enumerated in the Industrial Disputes Act?
4. To what relief is the workman concerned entitled?
5. The 2nd party-workman despite giving sufficient opportunity did not adduce any evidence either oral or documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absenting himself or his union representative.
6. The 1st Party-Management has adduced the oral evidence of Shri Abhay Kumar Das as M.W.-1 and filed documents marked as Ext.-A to Ext.-J in refutation of the claim of the 2nd Party-workman.

## FINDINGS

### ISSUE NO. 1

7. A specific plea has been raised by the 1st Party, Management that a group of 125 employees including the 2nd Party-workman had already raised a similar dispute in I.D. case no. 7/2007 before this Tribunal for the same relief which is pending for adjudication. The dispute as referred to in I.D. Case No. 7/2007 is given below for comparison with the dispute in the present case —

Whether the action of the Management of State bank of India, Orissa Circle, Bhubaneswar in not considering the case of 125 workmen whose details are in Annexure-A for re-employment as per Section 25(H) of Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workmen are entitled to?

8. The name of the 2nd Party-workman appears at Sl. No. 21 in Annexure-A to the above reference. in both the case the matter of disengagement or so called retrenchment is involved to be considered in one or the other way and the relief claimed is with regard to re-employment. But challenge has been made more specifically against the termination of service of the 2nd Party-workman in the present case while in I.D. Case no. 7/2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25-H of the Industrial Disputes Act. 1947. in fact, in the latter case the workmen have submitted or virtually surrendered to their cessation of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and

legality of the alleged termination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that the issues involved in both the cases are same. This case can proceed despite pendency of I.d. Case no. 7/ 2007 and the present reference by the individual workman pending for adjudication is maintainable being legal and justified. This issue is therefore decided in the affirmative and against the 1st Party-Management.

#### ISSUE NO. 2

9. The onus to prove that the 2nd Party-workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceding the date of his alleged termination or disengagement from service lies on him, but the 2nd Party-workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he had joined the service on 06.06.1988 and worked till 30.9.2004 on temporary/casual/daily wage basis, but he has not filed any certificate or reliable document showing the break-up of year-wise service rendered by him under the 1st party-Management during the above period. The 1st Party-Management, on the other hand, has alleged that the 2nd Party-workman was engaged intermittently on temporary/daily wage basis due to exigencies of work and he had never completed 240 days continuous service in a calendar year. M.W.-1 Shri Abhay Kumar Das in his statement before the Court has stated that "The disputant workman was working intermittently for few days in our Branch on daily wage basis in exigencies.....He had not completed 240 days of continuous and uninterrupted service preceding the alleged date of the termination". He has denied the allegation that the workman was discontinued from service with effect from 30.9.2004, but has stated that "In fact the workman left working in the Branch since December, 1999". The 2nd Party-workman has to disprove the evidence led by the 1st Party-Management, but he has not come before the Court to give evidence. A temporary or daily wage worker has not right to claim reinstatement and particularly when such an employee had not worked for 240 days continuously during a period of 12 calendar months preceding the date of his so-called termination. Thus he is not entitled to get benefit of Section 25-F of the Industrial Disputes Act, 1947. This issue is hereby decided against the 2nd Party-workman for failing to prove that he had worked for 240 days continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

#### ISSUE NO. 3

10. Since the 2nd Party-workman could not prove that he had rendered 240 days continuous service under

the 1st Party-Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination, he is not entitled for reemployment even in case of his alleged illegal and arbitrary termination. Moreover, he was a temporary/casual/daily wage employee. His services can be terminated at any time without assigning any cause by the 1st Party-management. He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party-workman has not filed any letter of appointment or proof of having rendered service under the 1st Party-management for a specified period against a regular post. The 1st Party-Management has further alleged that in time of exigencies only the 2nd Party-workman was employed. It means that with the end of exigencies his job also came to an end. In view of the matter the action of the management of State Bank of India, Bhubaneswar Main Branch in terminating the services of Sri Mukti Kanta Lenka with effect from 30.9.2004 his termination is fair, legal and justified. This issue is accordingly decided in the affirmative and against the 2nd Party-workman.

#### ISSUE NO. 4

11. In view of the findings recorded above under Issues No. 2 and 3, the 2nd Party-workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2013

का०आ० 2669.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 16/2008) की प्रकाशित करती है, जो केन्द्रीय सरकार को 03.12.2013 को प्राप्त हुआ था।

[सं० एल-12012/05/2008-आई आर (बी-1)]  
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd December, 2013

S.O. 2669.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 16/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 03.12.2013.

[No. L-12012/05/2008-IR(B-I)]  
SUMATI SAKLANI, Section Officer

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT,  
BHUBANESWAR****PRESENT:**

Shri J. Srivastava,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE NO. 16/2008****Date of Passing Award-21st March, 2013****Between:**

The Branch Manager,  
State Bank of India,  
ADB Branch, Salepur,  
Dist. Cuttack.

....1st Party-Management.

(And)

Their workman Sri Dhruba Charan Khuntia,  
Qr. No. VR-5/1, Kharvela Nagar, Unit-3,  
Bhubaneswar. (ORISSA)

....2nd Party-Workman.

**APPEARANCES:**

Shri Alok Das, ... For the 1st Party-  
Authorized Representative Management.

None. ... For the 2nd Party-  
Workman.

**AWARD**

The Government of India in the Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of State Bank of India and their workman under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 *vide* Letter No. L-12012/05/2008-IR(B-I), dated 07.04.2008 to this Tribunal for adjudication to the following effect:

"Whether the action of the management of State Bank of India in relation to their Salepur Branch, in terminating the services of Sri Dhruba Charan Khuntia *w.e.f.* 30.09.2004 without complying the provisions of the I.D. Act, 1947 is legal and justified? If not, what relief the workman is entitled to?"

2. The 2nd Party-Workman has filed his statement of claim alleging that he had joined his services as a Messenger on 01.01.1987/20.3.1985 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days' work in a calendar year, but despite completion of several years of continuous satisfactory service and putting in more than 240 days' work in each year he was not regularized, instead

terminated and refused employment from 30.9.2004 by the 1st Party-Management without any written communication or payment of compensation. The 1st Party-Management in refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He therefore brought the matter into the notice of the C.G.M. and C.D.O. of the State Bank of India, L.H.O., Bhubaneswar. But on hearing nothing, he raised an industrial dispute before the Regional Labour Commissioner (Central) *vide* his letter dated 21.02.2005. Conciliation proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30.9.2004.

3. The 1st Party-Management in its reply through written statement has stated that the present dispute is misleading and misconceived in as much as the 2nd Party workman had already raised a similar dispute along with 124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the Assistant Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st Party-Management. In the said dispute the failure report was sent by the Asst. Labour Commissioner (Central), Bhubaneswar to the Ministry of Labour who in turn referred the matter to this Tribunal for adjudication and the same is pending before this Tribunal being I.D. Case No. 7/2007. The name of the 2nd Party-workman is appearing at Sl. No. 111 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising individual dispute for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asst. Labour Commissioner (Central) while conciliating the individual disputes disregarded the direction of the Deputy Chief Labour Commissioner (Central) not to take any further action on the separate disputes raised by the same workers for the same cause of action. The allegation of the 2nd Party-workman that he had joined the Bank on 01.01.1987 and he was discontinued from service on 30.9.2004 is not correct. He was engaged in intermittently on temporary/daily wage basis due to exigencies of work. When his services were no more required he was not engaged further. It is further deined that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party-workman has neither completed several years of continuous service in the Bank nor he has completed 240 days of continuous service in any calendar year preceding the date of his alleged termination. In order to give an opportunity for permanent absorption to the ex-temporary employees/daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and the Management of the State Bank of India all eligible



persons were called for interview. The 2nd Party-workman was also called for interview in the year 1993. But he was not found successful hence could not be appointed in the Bank. The Union or the 2nd Party-workman has never challenged the implementation of the settlement which has now gained finality. It is further submitted that some of the wait-listed candidates, who could not be absorbed in the Bank's service due to expiry of the panel on 31st March, 1997, filed Writ Petitions before the Hon'ble High Court of Orissa. But the Hon'ble High Court of Orissa by a common order dated 15.5.1998 passed in O.J.C. No. 2787/1997 dismissed a batch of Writ Petitions and upheld the action of the Management of the Bank. This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC-3082/1999. Hence the above matter has attained finality and cannot be re-agitated. Since the services of Sri Khuntia had allegedly been discontinued much prior to the expiry of the panel his claim has become stale by raising the dispute after sixteen years. It is a settled principle of law that delay destroys the right to remedy. Thus the present dispute is liable to be rejected on the above grounds.

4. On the pleadings of the parties following issues were framed:—

### ISSUES

1. Whether the present reference of the individual workman during the pendency of I.D. Case No. 7/2007 before this Tribunal on the same issue is legal and justified?

2. Whether the workman has worked for more than 240 days as enumerated under Section 25-F of the Industrial Disputes Act?

3. Whether the action of the Management of State Bank of India, in relation to their Salepur Branch in terminating services of Shri Dhruba Charan Khuntia, w.e.f. 30.9.2004 is fair, legal and justified?

4. To what relief is the workman concerned entitled?

5. The 2nd Party-workman despite giving sufficient opportunity did not adduce any evidence either oral or documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absenting himself or his Union representative.

6. The 1st Party-Management has adduced the oral evidence of Shri Gagan Bihari Swain as M.W.-1 and filed documents marked as Ext.-A to Ext.-J in refutation of the claim of the 2nd Party-workman.

### FINDINGS

#### ISSUE NO. 1

7. A specific plea has been raised by the 1st Party-Management that a group of 125 employees including the 2nd Party-workman had already raised a similar dispute in

I.D. Case No. 7/2007 before this Tribunal for the same relief which is pending for adjudication. The dispute as referred to in I.D. Case No. 7/2007 is given below for comparison with the dispute in the present case—

Whether the action of the Management of State Bank of India, Orissa Circle, Bhubaneswar in not considering the case of 125 workmen whose details are in Annexure-A for re-employment as per Section 25(H) of Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workmen are entitled to?

8. The name of the 2nd party-workman appears at Sl. No. 111 in Annexure-A to the above reference. In both the cases the matter of disengagement or so called retrenchment is involved to be considered in one or the other way and the relief claimed is with regard to re-employment. But challenge has been made more specifically against the termination of service of the 2nd Party-workman in the present case while in I.D. Case No. 7/2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25-H of the Industrial Disputes Act, 1947. In fact, in the latter case the workmen have submitted or virtually surrendered to their cessation of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and legality of the alleged termination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that the issues involved in both cases are same. This case can proceed despite pendency of I.D. Case No. 7/2007 and the present reference by the individual workman pending for adjudication is maintainable being legal and justified. This issue is therefore decided in the affirmative and against the 1st Party-Management.

#### ISSUE NO. 2

9. The onus to prove that the 2nd Party-workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceeding the date of his alleged termination or disengagement from service lies on him, but the 2nd Party-workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he had joined the service on 01.01.1987 and worked till 30.9.2004 on temporary/casual/daily wage basis, but he has not filed any certificate or reliable document showing the break-up of year-wise service rendered by him under the 1st Party-Management during the above period. The 1st Party-Management, on the other hand, has alleged that the 2nd Party-workman was engaged intermittently on temporary/daily wage basis due to exigencies of work and he had never completed 240 days continuous service in a calendar year. M.W.-1 Shri Gagan Bihari Swain in his statement before the Court has stated that "The disputant was working intermittently for few days in our Branch on daily wage basis in exigencies..... He had not completed

240 days of continuous and uninterrupted service preceding the alleged date of the termination". He has denied the allegation that the workman was discontinued from service with effect from 30.9.2004, but has stated that "In fact the workman left working in the Branch since February, 1989". The 2nd Party-workman has to disprove the evidence led by the 1st Party-Management, but he has not come before the Court to give evidence. A temporary or daily wage worker has no right to claim reinstatement and particularly when such an employee had not worked for 240 days continuously during a period of 12 calendar months preceding the date of his so-called termination. Thus he is not entitled to get benefit of Section 25-F of the Industrial Disputes Act, 1947. This issue is hereby decided against the 2nd Party-workman for failing to prove that he had worked for 240 days continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

### ISSUE NO. 3

10. Since the 2nd party-workman could not prove that he had rendered 240 days continuous service under the 1st Party-Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination, he is not entitled for re-employment even in case of his alleged illegal and arbitrary termination. Moreover, he was a temporary/casual/daily wage employee. His services can be terminated at any time without assigning any cause by the 1st Party-Management. He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party-workman has not filed any letter of appointment or proof of having rendered service under the 1st Party-Management for a specified period against a regular post. The 1st Party-Management has further alleged that in time of exigencies only the 2nd Party-workman was employed. It means that with the end of exigencies his job also came to an end. In view of the matter the action of the management of State Bank of India, Bhubaneswar Main Branch in terminating the services of Sri Dhruba Charan Khuntia with effect from 30.9.2004 his termination is fair, legal and justified. This issue is accordingly decided in the affirmative and against the 2nd Party-workman.

### ISSUE NO. 4

11. In view of the findings recorded above under Issues No. 2 and 3, the 2nd Party-workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2013

का.आ. 2670.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ

इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 66/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/12/2013 को प्राप्त हुआ था।

[सं. एल-12012/99/2008-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd December, 2013

**S.O. 2670.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 66/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 03/12/2013.

[No. L-12012/99/2008-IR (B-I)]

SUMATI SAKLANI, Section Officer

### ANNEXURE

### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, BHUBANESWAR

#### Present:

Shri J. Srivastava,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar

### INDUSTRIAL DISPUTE CASE NO. 66/2008

Date of Passing Award—15th March, 2013

#### Between:

The Asst. General Manager,  
State Bank of India,  
Bapujinagar Branch,  
Dist. Khurda, Orissa  
Bhubaneswar, (Orissa)

...1st Party-Management

(AND)

Their Workman Sri Gyan Bhusan Sahoo,  
Qr. No.. VR-5/1, Kharvela Nagar, Unit-3,  
Bhubaneswar, (Orissa)

...2nd Party-Workman

#### Appearances:

Shri Alok Das, ... For the 1st Party-  
Authorized Representative Management

None ... For the 2nd Party-  
Workman

**AWARD**

The Government of India, Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of State Bank of India and their workman under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 *vide* Letter No. L-12012/99/2008-IR(B-I), dated 07.10.2008 to this Tribunal for adjudication to the following effect:

"Whether the action of the management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Sri Gyan Bhusan Sahoo w.e.f. 30.9.2004 without complying the provisions of the I.D. Act, 1947, is legal and justified? To what relief is the workman concerned entitled?"

2. The 2nd Party-Workman has filed his statement of claim alleging that he had joined his services as Messenger on 01.01.1991 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days work in a calendar year, but despite completion of several years of continuous satisfactory service and putting in more than 240 days' work in each year he was not regularized, instead terminated and refused employment from 30.9.2004 by the 1st Party-Management without any written communication or payment of compensation. The 1st Party-Management in refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He therefore brought the matter into the notice of the C.G.M. C.D.O. of the State Bank of India, L.H.O., Bhubaneswar. But on hearing nothing, he raised an industrial dispute before the Regional Labour Commissioner (Central) *vide* his letter dated 29.10.2007. Conciliation proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30.9.2004.

3. The 1st Party-Management in its reply through written statement has stated that the present dispute is misleading and misconceived in as much as the 2nd Party-workman had already raised a similar dispute along with 124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the Assistant Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st Party-Management. In the said dispute the failure report was sent by the Asst. Labour Commissioner (Central), Bhubaneswar to the Ministry of Labour who in turn referred the matter to this Tribunal for adjudication and the same is pending before this Tribunal being I.D. Case No. 7/2007. The name of the 2nd Party-workman is appearing at Sl. No. 123 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising

individual dispute for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asst. Labour Commissioner (Central) while conciliating the individual disputes disregarded the direction of the Deputy Chief Labour Commissioner (Central) not to take any further action on the separate disputes raised by the same workers for the same cause of action. The allegation of the 2nd Party-workman that he had joined the Bank on 01.01.1991 and he was discontinued from service on 30.9.2004 is not correct. He was engaged intermittently on temporary/daily wage basis but to exigencies of work. When his services were no more required he was not engaged further. It is further denied that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party-workman has neither completed several years of continuous service in the Bank nor he has completed 240 days of continuous service in any calendar year preceding the date of his alleged termination. In order to give an opportunity for permanent absorption to the ex-temporary employees/daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and the Management of the State Bank of India all eligible persons were called for interview. The 2nd Party-workman was also called for interview in the year 1993. But he was not found successful hence could not be appointed in the Bank. The Union or the 2nd Party-workman has never challenged the implementation of the settlement which has now gained finality. It is further submitted that some of the wait-listed candidates, who could not be absorbed in the Bank's service due to expiry of the panel on 31st March, 1997, filed Writ Petitions before the Hon'ble High Court of Orissa. But the Hon'ble High Court of Orissa by a common order dated 15.5.1998 passed in O.J.C. No. 2787/1997 dismissed a batch of Writ Petitions and upheld the action of the Management of the Bank. This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC - 3082/1999. Hence the above matter has attained finality and cannot be re-agitated. Since the services of Sri Behera had allegedly been discontinued much prior to the expiry of the panel his claim has become stale by raising the dispute after ten years. It is a settled principle of law that delay destroys the right to remedy. Thus the present dispute is liable to be rejected on the above grounds.

4. On the pleadings of the parties following issues were framed:—

**ISSUES**

1. Whether the present reference of the individual workman during the pendency of the I.D. Case No. 7/2007 before this Tribunal on the same issue is legal and justified?

2. Whether the workman has worked for more than 240 days as required under Section 25-F of the Industrial Disputes Act?



3. Whether the action of the Management of State Bank of India, Bhubaneswar Main Branch, Bhubaneswar, in terminating services of Shri Gyana Bhusan Sahoo, w.e.f. 30.9.2004 is, fair, legal and justified?

4. To what relief is the workman concerned entitled?

5. The 2nd Party-workman despite giving sufficient opportunity did not adduce any evidence either oral or documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absenting himself or his Union representative.

6. The 1st Party-Management has adduced the oral evidence of Shri Abhay Kumar Das as M.W.-1 and filed documents marked as Ext. -A to Ext.-J in refutation of the claim of the 2nd Party-workman.

### FINDINGS

#### ISSUE NO. 1

7. A specific plea has been raised by the 1st Party-Management that a group of 125 employees including the 2nd Party-workman had already raised a similar dispute in I.D. Case No. 7/2007 before this Tribunal for the same relief which is pending for adjudication. The dispute as referred to in I.D. Case No. 7/2007 is given below for comparison with the dispute in the present case —

Whether the action of the Management of State Bank of India, Orissa Circle, Bhubaneswar in not considering the case of 125 workmen whose details are in Annexure-A for re-employment as per Section 25(H) of Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workmen are entitled to?

8. The name of the 2nd party-workman appears at Sl. No. 123 in Annexure-A to the above reference. In both the cases the matter of disengagement or so called retrenchment is involved to be considered in one or the other way and the relief claimed is with regard to re-employment. But challenge has been made more specifically against the termination of service of the 2nd Party-workman in the present case while in I.D. Case No. 7/2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25-H of the Industrial Disputes Act, 1947. In fact, in the latter case the workmen have submitted or virtually surrendered to their cessation of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and legality of the alleged termination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that the issues involved in both the cases are same. This case can proceed despite pendency of I.D. Case No. 7/2007 and the present reference by the individual workman pending for adjudication is maintainable being legal and justified. This issue is therefore decided in the affirmative and against the 1st Party-Management.

#### ISSUE NO. 2

9. The onus to prove that the 2nd Party-workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceding the date of his alleged termination or disengagement from service lies on him, but the 2nd Party-workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he had joined the service on 01.01.1991 and worked till 30.9.2004 on temporary/casual/daily wage basis, but he has not filed any certificate or reliable document showing the break-up of year-wise service rendered by him under the 1st Party-Management during the above period. The 1st Party-Management, on the other hand, has alleged that the 2nd Party-workman was engaged intermittently on temporary/daily wage basis due to exigencies of work and he had never completed 240 days continuous service in a calendar year. M.W.-1 Shri Abhay Kumar Das in his statement before the Court has stated that "The disputant was working intermittently for few days in our Branch on daily wage basis in exigencies..... He had not completed 240 days of continuous and uninterrupted service preceding the alleged date of the termination". He has denied the allegation that the workman was discontinued from service with effect from 30.9.2004, but has stated that "In fact the workman left working in the Branch since August, 1991.". The 2nd Party-workman has to disprove the evidence led by the 1st Party-Management, but he has not come before the Court to give evidence. A temporary or daily wage worker has no right to claim reinstatement and particularly when such an employee had not worked for 240 days continuously during a period of 12 calendar months preceding the date of his so-called termination. Thus he is not entitled to get benefit of Section 25-F of the Industrial Disputes Act, 1947. This issue is hereby decided against the 2nd Party-workman for failing to prove that he had worked for 240 days continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

#### ISSUE NO. 3

10. Since the 2nd Party-workman could not prove that he had rendered 240 days continuous service under the 1st Party-Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination, he is not entitled for re-employment even in case of his alleged illegal and arbitrary termination. Moreover, he was a temporary/casual/daily wage employee. His services can be terminated at any time without assigning any cause by the 1st Party-Management. He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party-workman has not filed any letter of appointment or proof of having rendered service under the 1st Party-Management for a specified



period against a regular post. The 1st Party-Management has further alleged that in time of exigencies only the 2nd Party-workman was employed. It means that with the end of exigencies his job also came to an end. In view of the matter the action of the management of State Bank of India, Bhubaneswar Main Branch in terminating the services of Sri Gyana Bhusan Sahoo with effect from 30.9.2004 his termination is fair, legal and justified. This issue is accordingly decided in the affirmative and against the 2nd Party-workman.

#### ISSUE NO. 4

11. In view of the findings recorded above under Issues No. 2 and 3, the 2nd Party-workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2013

**का०आ० 2671.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 39/2007) को प्रकाशित करती है, जो केंद्रीय सरकार को 03/12/2013 को प्राप्त हुआ था।

[सं० एल-12012/143/2007-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd December, 2013

**S.O. 2671.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 03/12/2013.

[No. L-12012/143/2007-IR(B-1)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

#### Present:

Shri J. Srivastava,  
Presiding Officer, C.G.I.T.-cum-Labour Court,  
Bhubaneswar.

#### INDUSTRIAL DISPUTE CASE NO. 39/2007

Date of Passing Award — 23rd September, 2013

#### Between:

1. The Chief General Manager,  
State Bank of India, LHO,  
III/1, Pt. Jawahar Lal Nehru Marg,  
Bhubaneswar (Orissa)

2. The Chief Manager,  
State Bank of India,  
Forest Park Branch, Dist. Khurda,  
Bhubaneswar (Orissa) - 751 009

...1st Party-Managements

(And)

Their Workman Shri Benudhar Bisoi,  
At. Kumbharpada (Kusasahi),  
Po. & Dist. Puri, Orissa

...2nd party Workman

#### Appearances:

Shri Alok Das, ... For the 1st Party-  
Auth. Representative Management No. 1  
and 2.

Shri Benudhar Bisoi ... For Himself the  
2nd Party Workman

#### AWARD

The Government of India in the Ministry of Labour has referred an industrial dispute existing between the employers in relation to the management of State Bank of India, LHO, and their workman in exercise of the powers conferred by clause (d) of sub-section (1) of sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 *vide* its letter No. L-12012/143/2007-IR (B-1), dated 13.11.2007 in respect of the following matter:—

"Whether the action of the Management of State Bank of India, Forest Park Branch, Bhubaneswar in terminating the services of Shri Benudhar Bisoi, casual/temporary workman, is legal and justified? If not, to what relief the workman is entitled to?"

2. The 2nd Party-workman in his statement of claim has alleged that he was originally engaged to work as a temporary messenger from 3.4.1985 to 7.9.1985 on monthly wages. Thereafter he was engaged from 8.9.1985 to 31.10.1985 on petty cash basis. Again he was engaged as a canteen boy from 1.11.1985 to 5.11.1995 and thereafter continued to work as temporary messenger for Sunday trailer counter and even engaged for postal work, sweeping etc. on daily wage basis. In the year 1990 an interview was conducted for selection of messengers and in that interview he was placed at Sl. No. 55 in the panel. But instead of giving regular appointment from the panel another interview was conducted in the year 1993 to enable persons not selected in the year 1990. The 2nd Party-workman along with other workers on the basis of interview conducted in

the year 1990 was appointed as temporary messenger with usual salary, D.A., HRA etc. But in a strange way, without making the workman permanent some persons from the panel of 1990 and some persons from the panel of 1993 were appointed as permanent sub-staff. The 2nd Party-workman on 7.8.2006 received a letter from the Chief Manager, State Bank of India, Forest Park Branch, communicating his retrenchment with payment of retrenchment compensation and one month's salary. Some persons junior to him are still being retained by the Bank. Therefore his retrenchment is illegal, arbitrary and bad in law. The 2nd Party-workman has rendered 21 years of service and he has several liabilities to discharge. Despite his request and personal approach to the Chief Manager of the Bank nothing has been done. Therefore, he raised the dispute before the conciliation officer/Assistant Labour Commissioner (Central), Bhubaneswar. On failure of the conciliation, the matter was referred to this Tribunal for adjudication. Although the Management has paid one month's notice pay and retrenchment compensation to him in compliance of Section 25-F of the Industrial Disputes Act, yet the action taken by the Management cannot be said to be legal in as much as two employees, namely, Shri Pitabash Rout and R.N. Panigrahi, who are junior to him, are continuing in service and have been given regular appointment. Another two persons, namely, Shri Ambar Nayak and Banabihari Behera of 1993 selection list have also been appointed in the regular roll ignoring the case of the workman who was in the 1990 selection list. The principle of first come last go has not been followed. The Management's action in retrenching the workman in isolation retaining his juniors is not only arbitrary, whimsical and bad in law but also inhuman. Therefore his termination be held illegal and unjustified and direction be issued for his reinstatement with back wages and consequential service benefits.

3. The 1st Party-Management in its written statement has stated that the disputant had worked at the Forest Park Branch of the Management intermittently for few days prior to the year 1987 on casual/daily wages basis. He along with other similarly placed persons was given a chance of permanent absorption in the Bank in view of the various settlements entered into between the Bank and Staff Federation. They were called for interview in the year 1990 and 1993. The persons who were found suitable in the interview were placed in the panel of wait-listed candidates in order of merit and their respective categories. The name of the disputant was in the list of wait-listed candidates at Sl. No. 103 in "C" Category. He was given temporary appointment at Forest Park Branch in the year 1995. But till the expiry of the panel i.e. on 31.3.1997, he could not be absorbed permanently in the Bank, as his name was very much low in the wait-listed candidates. After expiry of the panel his temporary services came to an end. But due to

interim order dated 17.3.1997 passed in Misc. Case No. 3029/1997 arising out of O.J.C. No. 3763 of 1997 filed by the disputant along with 12 others, his services could not be terminated and he continued at the Forest Park Branch as a surplus. The O.J.C. No. 3763 of 1997 was disposed of on 16.4.2002 in terms of the judgement passed in similar W.P.(C) No. 2787/97 (Abhimanyu Mandal & Others -versus- State Bank of India) which was affirmed by the Hon'ble Supreme Court in S.L.P. *vide* order dated 16.7.1999. After dismissal of the writ petition filed by the disputant his services should have been discontinued due to oversight he continued in the Branch and after detection of the same his services were discontinued from 7.8.2006 after payment of necessary retrenchment compensation and one month's pay under the provisions of the Industrial Disputes Act, 1947. Therefore the termination of the disputant being legal and justified cannot be a matter of industrial dispute and does not call for any adjudication by the Tribunal. Some temporary workers are still continuing at few branches of the Bank by virtue of interim order passed by the Hon'ble High Court of Orissa. Hence their continuance cannot be equated with the disputant. It is not correct to say that the persons who were appointed subsequently are still continuing at the Branch. The cases of Ambar Naik and Banabihari Behera are completely on different footing. The name of Shri Ambar Naik was at Sl. No. 26 and that of Shri Banabihari Behera was at Sl. No. 34 in the panel of daily wagers in "C" category of 1993. Therefore they were appointed in the Bank in due course when their turn came. As the name of the disputant was at Sl. No. 103 in "C" category he cannot equate his case with other two persons.

4. On the pleadings of the parties following issues were framed.

#### ISSUES

(1) Whether the reference is maintainable?

(2) Whether the action of the management of State Bank of India, Forest Park Branch, Bhubaneswar in terminating the services of Shri Benudhar Bisoi, casual/temporary workman is legal and justified?

(3) If not, to what relief the workman is entitled?

5. The 2nd Party-workman Shri Benudhar Bisoi has filed his own sworn affidavit in evidence on which opportunity to cross-examine was given to the 1st Party-Management. No document has been filed by the 2nd Party-workman in support of his claim.

6. The 1st Party-Management has examined Shri Pradip Kumar Mishra, Branch Manager in evidence and has relied on twelve documents marked as Ext.-A to K and K/1.

**FINDINGS****ISSUE NO. 1**

7. Since there is no specific pleading about the maintainability of the reference or claim and only generalized statement has been made in the written statement by the 1st Party-Management, as such this issue being based on no pleading is decided against the 1st Party-Management in the affirmative.

**ISSUE NO. 2**

8. The 2nd Party-workman has stated that he has rendered 21 years of service at the Forest Park Branch of State Bank of India, Bhubaneswar. But the 1st Party-Management has alleged that Shri Bisoi had worked intermittently in temporary capacity for few days at the Branch prior to 1987. The 1st party-Management has not disputed his further engagement as alleged by the 2nd Party-workman in his statement of claim. It is an admitted fact that he worked in a temporary capacity. According to the 1st Party-Management the services rendered by the 2nd Party-workman as a canteen boy were not at the behest of the Management. Canteen boys are engaged by the Local Implementation Committee and as such they are not employed by the Bank. However all these allegations do not count much to the present dispute. The question is whether the termination of the 2nd Party-workman is legal and justified or not? There is no dispute that the 2nd Party-workman was called for interview along with other similarly placed workmen for interview in the year 1990 and 1993. The name of the 2nd party-workman was so below in the list that he could not be appointed in a permanent post. The panel of wait listed candidates expired on 31.3.1997 and till that date his name could not reach to the point of vacant post. The 2nd Party-workman has not placed any documentary evidence to show that candidates below his name were appointed in the permanent post by the 1st Party-Management. The contention of the 1st Party-Management is that the workmen who are still continuing in the service were continued due to judicial orders. The matter of appointment of the 2nd Party-workman and other similarly placed workers had been finally settled by the Hon'ble High Court of Orissa *vide* its order dated 15.5.1998 passed in O.J.C. No. 2787/97 in the case of Abhimanyu Mandal versus State Bank of India and others which was affirmed by the Hon'ble Supreme Court in S.L.P. On finalization of the said matter the 2nd Party-workman was discontinued from service by the 1st party-Management by its letter dated 7.8.2006 making payment of one month's notice pay and retrenchment compensation to him, which fact has been admitted by the 2nd Party-workman. Therefore the 1st Party-Management has complied with the provisions of Section 25-F of the Industrial Disputes Act while terminating the services of Shri Benudhar Bisoi. In this background the action of the 1st Party-Management of State Bank of India, Forest Park Branch, Bhubaneswar in

terminating the services of Shri Benudhar Bisoi, casual/temporary workman is perfectly justified and in accordance with law. Issue no. 2 is accordingly decided against the 2nd party-workman.

**ISSUE NO. 3**

9. Since the services of the 2nd Party-workman have been terminated in accordance with due process of law and the action of the 1st Party-Management in this regard is justified the 2nd Party-workman is not entitled to any relief.

10. The reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2013

**कांआ 2672.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नीलाचल ग्राम्य बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 17/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/12/2013 को प्राप्त हुआ था।

[सं एल-12012/187/2008-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd December, 2013

**S.O. 2672.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Neelachal Gramya Bank, and their workmen, received by the Central Government on 03/12/2013.

[No. L-12012/187/2008-IR(B-I)]

SUMATI SAKLANI, Section Officer

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR**

**Present:** Shri J. Srivastava,  
Presiding Officer, C.G.I.T. cum-Labour  
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE No. 17/2009**

Date of Passing Award-10th October, 2010

**Between:**

The Manager,  
Neelachal Gramya Bank, Nilakantha Nagar,  
Bhubaneswar

... Ist Party-Management

(And)

Their Workman Shri Janmejaya Samantara,  
S/o. Shri Kailash Ch. Samantara,  
Vilage Dakhinanuagaon, P.S. Bindha,  
Via. Pipilti, Dist. Puri

...2nd Party-Workman.

**Appearances:**

Shri Hemant Kr. Mishra      ...      For the 1st Party-  
Auth. Representative.      Management.

None.      ...      For the 2nd Party-  
Workman.

**AWARD**

The Government of India in the Ministry of Labour has referred an industrial dispute existing between the employees in relation to the management of Neelachal Gramya Bank, Bhubaneswar and their workman in exercise of the powers conferred by clause (d) and sub-section (1) of sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 *vide* letter No. L.-12012/187/2008-IR(B-I), dated 17.03.2009 in respect of the following matter:

"Whether the action of the management of Neelachal Gramya Bank, Bhubaneswar in terminating the services of their workman Shri Janmejaya Samantara *w.e.f.* 05/03/2006, is legal and justified? If not, what relief the workman concerned is entitled to?"

2. The 2nd Party-workman submitted his statement of claim alleging that he was appointed as a Typist on daily wage basis at the rate of Rs. 80/- per day by the 1st Party-Management on 3.6.2003 and he resumed his duties on the same date. During his tenure of service he was neither issued any charge sheet for misconduct nor any enquiry was initiated against him. The 1st Party-Management used to take work from him from 10 A.M. to 5 P.M. on all working days, but overtime wages and other statutory benefits such as bonus, leave etc. were not provided to him. When he repeatedly demanded these benefits, the management verbally told him that his service is no more required and he was not allowed to perform his work with effect from 5.3.2006 without any notice or retrenchment compensation. He was also not paid his salary for the month of February and March, 2006. He had worked with the 1st Party-Management for more than 240 days continuously and uninterruptedly within a period of twelve calendar months preceding the date of his termination. Therefore he is entitled to the benefits of section 25-F of the Industrial Disputes Act and for non-compliance of these provisions his termination is void-ab-initio. The principle of "last come first go" was also not followed and a fresh appointment was given to an outside in violation of the provisions of Section 25-H of the Industrial Disputes Act. Therefore his termination be declared illegal and unjustified and he be

reinstated in service with full back wages and other consequential benefits.

3. In its written statement the 1st Party-Management has stated that the reference is not maintainable in as much as the 2nd party-workman is not a workman at all. He was never appointed as a Typist on daily wage basis. As he was never appointed by the 1st Party-Management the question of issuance of charge sheet or order of his termination or payment of bonus, overtime or allowance of leave etc. does not arise. The 2nd Party-workman has not produced any receipt of salary or wages or proof of working for 240 days in a year. As there is no "employer and employee" relationship between the parties, the 2nd Party-workman is not entitled to the benefits of any of the provisions of the Industrial Disputes Act, 1947.

4. On the pleadings of the parties, following issues were framed.

**ISSUES**

1. Whether the reference is maintainable?
2. Whether the disputant Shri J. Samantara is a workman as defined under the definition of the I.D. Act, 1947?
3. Whether the action of the Management of Neelachal Gramya Bank, Bhubaneswar in terminating the services of the disputant Shri J. Samantara with effect from 5.3.2006 is legal and justified?
4. If not to what relief the disputant Shri J. Samantara is entitled?
5. The 2nd Party-workman has not adduced any oral or documentary evidence in support of his claim. He has abstained himself from attending the court from 7.9.2011, when he was called upon to produce his evidence. Therefore the case was ordered to proceed ex-parte against him on 1.3.2012.
6. The 1st Party-Management has adduced the evidence through sworn affidavit of Shri Nrusingh Charan Behera, Senior Manager, Personnel Administration Deptt.

**FINDINGS****ISSUE No. 1 & 2**

7. Since both the issues are based on same pleas and are inter-dependant, they are taken up together.

8. The 1st Party-Management has denied relationship of "employer and employee" between itself and the 2nd Party-workman. Therefore for want of this relationship the reference cannot be held to be maintainable. The burden to prove these issues lies on the 2nd Party-workman, but he failed to adduce any evidence to show that he was ever appointed by the 1st Party-Management to work as a Typist on daily wage basis or in any capacity. He has admitted in



his claim statement that he was not issued with any appointment letter. But if no appointment letter was issued to him he may adduce other evidence such as voucher or receipt of payment of wages, certificate with regard to his service under the 1st Party-Management. But no such document has either been produced, nor the 2nd Party-workman has dared to come to the witness box to depose the facts averred in his statement of claim. The witness Shri Nrusingh Charan Behera examined on behalf of the 1st Party-Management has stated in his affidavit that he deals with the staff related matters. There was never any person named Shri Janmejaya Samantara in the pay roll of the Bank and no salary, payment or engagement/termination order was ever issued to him. He was never paid any salary. There was no provision of engagement of any person on daily wage basis in the Appointment and Promotion of Officers and other Employees Rules, 1998.

9. In view of the evidence led by the 1st Party-Management vis-a-vis no evidence adduced by the 2nd party-workman it is to be held that the disputant Shri Janmejaya Samantara was never appointed as a workman by the 1st Party-Management and therefore he does not come under the definition of a "workman" under the Industrial Disputes Act, 1947. Accordingly no relationship of "employer and employee" is proved between the 1st Party-Management and the 2nd Party-workman and in such a situation the reference is not maintainable before this Tribunal/Labour Court. Both the issues are decided in the negative and against the 2nd Party-workman.

### ISSUE No. 3

10. The 1st Party-Management has denied the appointment of the 2nd Party-workman as Typist on daily wage basis or in any other capacity. It has further denied having terminated his service with effect from 5.3.2006. As such no question arises for putting the so-called action of the 1st Party-Management in terminating the services of the disputant to test as to its legality or justification. This issue does not arise at all in view of the failure of the 2nd Party-workman to establish himself as workman and his services being terminated by the 1st Party-Management. Therefore this issue is decided accordingly.

### ISSUE No. 4

11. As the disputant Shri Janmejaya Samantara has failed to prove his case he is not entitled to any relief claimed for.

12. Reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2013

**का.आ. 2673.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 67/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/12/2013 को प्राप्त हुआ था।

[सं. एल-12012/159/2000-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd December, 2013

**S.O. 2673.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 67/2002) of the Cent.Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 03/12/2013.

[No.L-12012/159/2000-IR(B-I)]

SUMATI SAKLANI, Section Officer

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

**Present :** Smt. M. Vijaya Lakshmi,

Presiding Officer

Dated the 3rd day of July, 2013

### INDUSTRIAL DISPUTE NO. 67/2002

(Old ID No. 112/2000 transferred from  
Industrial Tribunal, Hyderabad)

### Between:

Kum. V. Ganga Bhavani,  
Sree Sai Enterprises,  
Brundavan Complex, Shop No. 46,  
Beaseant Road, Vijayawada-2

....Petitioner

AND

The Asst. General Manager,  
State Bank of India,  
Zonal Office, Region-II  
Vijayawada-1.

.....Respondent

### Appearances:

For the Petitioner : Shri K. Subhas Reddy, Advocate

For the Respondent : M/s. B.G. Ravindra Reddy &  
B. V. Chandrasekhara, Advocates

### AWARD

The Government of India, Ministry of Labour by its order No. L-12012/159/2000-IR(B-I) dated 31.8.2000 referred the following dispute under section 10(1) (d) of the I.D. Act, 1947 for adjudication to the Industrial Tribunal-cum-Labour Court, transferred to this Court in view of the

Government of India, Ministry of Labour's order No. H-11026/1/2001-IR (C-II) dated 18.10.2001 bearing I.D. No. 112/2000 and renumbered in this Court as I.D.No. 67/2002.

### SCHEDULE

"Whether the action of the Manager, State Bank of India, Vijayawada Zone in dismissing services of Kum. V. Ganga Bhavani, Ex-Messenger *w.e.f.* 31.3.97 is justified? If not what relief the workman is entitled?"

The reference is numbered in this Tribunal as I.D. No. 67/2002 and notice were issued to the parties concerned.

2. The case stands posted for enquiry of Petitioner. Petitioner called absent and there is no representation since long time. As per the office record, notices issued time and gain to the Petitioner as well as to her counsel, returned unserved. Recent notice issued to the Petitioner's counsel returned unserved as not claimed. Since long time neither Petitioner nor her counsel are taking part in the proceeding. In the circumstances, taking that Petitioner is not at all interested in the proceedings, petition is dismissed.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 3rd day of July, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

### Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

### Documents marked for the Petitioner

NIL

### Documents marked for the Respondent

NIL

नई दिल्ली, 3 दिसम्बर, 2013

कांआ 2674.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) कि धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अहमदाबाद के पंचाट (संदर्भ संख्या 150/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/12/2013 को प्राप्त हुआ था।

[सं एल-12012/39/2012-आई आर (बी-1)]  
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd December, 2013

**S.O. 2674.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 150/2012) of the Cent.Govt.Indus. Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 03/12/2013.

[No. L-12012/39/2012-IR(B-I)]

SUMATI SAKLANI, Section Officer

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

### PRESENT

Binay Kumar Sinha,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,

Dated 13th August, 2013

### Reference: (CGITA) No. 150 of 2012

1. The Manager-Administration,  
State Bank of India,  
Near C.N. Vidhyalaya, Ambawadi,  
Ahmedabad (Gujarat)
2. Regional Manager,  
State Bank of India,  
Near C.N. Vidhyalaya, Ambawadi,  
Ahmedabad (Gujarat) ...First Party

AND

Their Workman  
Shri Chandrakant Baldevdas Nayak  
At & PO-Jadar, Taluk-Idar  
Dist-Sabarkatha, Gujarat ...Second Party

For the First Party : Shir Bhargav M. Joshi,  
Advocate  
For the Second Party : Shir Kamlesh V. Vyas,  
Advocate

### AWARD

As per order No. L-12012/39/2012-IR(B-I)], New Delhi dated 27.09.2012, the Central Government/Ministry of Labour, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the I.D. Act, 1947 referred the dispute for adjudication in terms of reference under the schedule:

### SCHEDULE

"Whether the demand of Shri Chandrakant Baldevdas Nayak for withdrawal of punishment of

stoppage of two increments by the management of State Bank of India, Ahmedabad is legal and justified? To what relief the workman is entitled?

2. Upon notice issued to the parties the 1st party Ban through Vakalatnama (Ext. 6) in favour of Shri B.M. Joshi, Advocate on 06.05.2013 and the 2nd party workman also appeared executing Vakalatnama (Ext. 7) in favour of Shri K.V. Vyas, Advocate on 13.08.2013 and the case was running for filing pleading.

3. In the meantime a withdrawal pursis (Ext. 9) is filed on 13.08.2013 by the workman Chandrakant containing signature of his lawyer and the 1st party's lawyer noting down on objection on Ext. 9. The withdrawal pursis was moved and pressed which contains voluntary withdrawal of this reference case without having any pressure and so the withdrawal pursis is fit to be allowed.

4. The dispute appears to have been settled and so the workman preferred to file withdrawal pursis which is allowed.

5. Now there remains no dispute between the parties as per withdrawal pursis (Ext. 9). So, there is no need to adjudicate upon the terms of reference.

So, no dispute award is passed.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2013

**कांआ 2675.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ सौराष्ट्र के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अहमदाबाद के पंचाट संदर्भ संख्या 30/2007, को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/12/2013 को प्राप्त हुआ था।

[सं एल-12012/110/2006-आई आर (बी-1)]  
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd December, 2013

**S.O. 2675.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 30/2007 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of State Bank of Saurashtra, and their workmen, received by the Central Government on 03/12/2013.

[No. L-12012/110/2006-IR(B-I)]  
SUMATI SAKLANI, Section Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### PRESENT

Binay Kumar Sinha,  
Presiding Officer, CGIT cum Labour Court,  
Ahmedabad,

Dated 29th January, 2013

#### Reference: (CGITA) No. 30 of 2007

1. Managing Director,  
State Bank of Saurashtra,  
(Now State Bank of India),  
Head Office, N.B. Chauk,  
Bhavnagar (Gujarat)
2. Deputy General Manager  
(Personnel & H.R.D.)  
State Bank of Saurashtra,  
(Now State Bank of India)  
Head Office, N.B. Chauk,  
Bhavnagar (Gujarat)

...First Party

And

Their Disputant  
Through, the General Secretary,  
Shramjivi Kalyan Sangh,  
25/ Municipal Shopping Centre,  
Near A.V. School Ground,  
Crescent, Bhavnagar (Gujarat)

...Second Party

For the First Party : Ms. Meenaben Shah,  
Advocate,

For the Second Party : Shri Amarish Patel Advocate  
Shri Jogesh V. Joshi  
(Union, General Secretary)

#### AWARD

The Central Government/Ministry of Labour, Shram Shakti Bhavan, Rafi Marg, New Delhi, considering the Industrial dispute exists between the employers in relation to the management of State Bank of Saurashtra (now State Bank of India), Head office, and the disputant as per order No. L-12012/110/2006 [IR (B-1)] dated 26.03.2007, in exercise of power conferred by cl. (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947, referred the dispute for adjudication to this C.G.I.T. cum Labour Court under the terms of schedule:

#### SCHEDULE

"Whether the action of the management of State Bank of Saurashtra, Bhavnagar for not giving opportunity to Shri Ankit Ashok Andharia S/o Late Ashok B. Andharia for his compassionate appointment as per

the scheme of the Bank is legal and just? If not, what relief the disputant is entitled to and to what extent?

2. The case of the 2nd party disputant namely Ankit Ashok Andharia through the Union as per statement of claim (Ext.-4) is that his father Late Ashok B. Andharia was serving as clerk-cum-cashier with the 1st party Bank since 06.06.1983. His father was permanent employee of the Bank and there was relationship of employer and employee in between the Bank and his late father. His father died on 19.06.2002 due to disease of cancer leaving behind wife Purnimaben, son Ankit and a daughter. Due to father's untimely death his family financial condition was weak and there was no earning member in the family. As per rules and regulations and policy of the Bank, the dependant heirs of the deceased employee is entitled to get the employment on compassionate ground when the employee is entitled to get the employment. Disputant Ankit was a minor at the time of death of his father. Ashok and so widow of Ashok namely Purnimaben applied to the Bank (1st party) for her compassionate employment on 24.07.2002 within stipulated time and that reply was received through Branch Manager, Kumbharwada that there is no any possibility to give appointment on compassionate ground. Deputy General Manager (Personnel and HRD) also replied vide letter dated 31.01.2003 that it is the discretion of the Bank to consider application on the basis of facts on the record. Her case is not a fit case to be considered for compassionate appointment. Then Purnimaben filed civil suit against the decision of Bank *vide* suit No. 66/2003 in the court of Civil Judge (J.D.), Bhavnagar. Purnimaben, subsequently withdrew that suit on 09.09.2005. On 18.12.2003 Purnimaben had submitted application on to the Bank (1st party) to include his son Ankit for service in the Bank on compassionate appointment. Also disputant Ankit submitted application on 02.11.2004 before the Bank in prescribed form for giving him employment. Date of birth of Ankit is 06.06.1983 and he completed 18 years of age on 10.09.2005. Again the disputant Ankit submitted application to Bank on 10.09.2005 to give him compassionate appointment, after withdrawal of the Civil Suit No. 66/2003 by Purnimaben on 09.09.2005. But the Bank did not give any reply to the application dated 10.09.2005 of the disputant Ankit. Then Union for the disputant sought for demand before the Bank on 29.10.2005 for giving Ankit compassionate appointment, but no reply was given by the Bank (1st party). Then dispute was raised before the ALC (Central) and the Bank filed its reply on 15.02.2006 that the compassionate appointment in Banks are purely at the discretion of competent authority of the Bank and legal heirs cannot have any legal right for appointment in the Bank. Then failure report of conciliation was sent to the appropriate Government resulting in reference order by the appropriate Government. On these grounds, prayer is for directing the 1st party to give compassionate appointment to the disputant Ankit Ashok Andharia as per

his educational qualification *w.e.f.* 10.09.2005 and for any other relief to which the disputant is found entitled with cost of the case.

3. As against this the case of the 1st party Bank is that the statement of claim of the 2nd party disputant/ Union is misconceived and not maintainable. However admitting para 1 and 2 of S/c, whereas para 3 of S/c is matter of facts and no reply needed. The content of para 4 of S/c is denied with such contention that Ashok D. Andharia had misappropriated huge Bank's fund which are public money for his personal use and that had been admitted by him in his letter dated 20.11.2001 marked as Annexure-I. The contention is that there is no provision of compassionate appointment in the 1st party Bank *w.e.f.* 02.02.2006 or thereafter para 5 of S/c is also denied. Further case is that the widow Purnimaben of deceased employee Ashok was financially sound to support her family members even after death of Ashok. On the contrary, the basic purpose of the compassionate appointment is to get financial support for the survival of her family members by way of getting herself employed in Bank immediately within a reasonable time after demise of her husband was not necessitated in her case. So there was no pious intention of Purnimaben widow of late Ashok in applying for compassionate appointment in the Bank. Para 6 of S/c is also denied. Further contention is that there is no clarity of date of birth of the disputant 2nd party as per statement of claim and that the need of financial support of family members of late Ashok by way of compassionate appointment in the Bank for their livelihood is not substantiated with reference to para 7 of the S/c because different family members of Late Ashok had applied one after another for compassionate appointment. The present claim of the 2nd party disputant Ankit as per his application dated 10.09.2005 is more than three years after his father's death. That also defeats the basic purpose of compassionate appointment due to delayed request as per decision of the Hon'ble Supreme Court. Further case is that it is discretion of the 1st party Bank to consider any compassionate appointment examining the circumstances with reference to the letter dated 19.02.2002 as per Annexure-2 of Ministry of Finance, Department of Economic Affairs (Banking Division), Government of India addressed to all public sector Banks and Financial Institutions. Further case is that the wording "discretion" has been properly interpreted by the 1st party Bank in the present case, the Bank has suffered a huge loss in lacs of rupees due to some misdeeds of late Ashok D. Andharia, the father of disputant Ankit by siphoning Bank's fund *viz* public money for his personal use which had been admitted by Ashok D. Andharia. The loss sustained by Bank has not been made good by deceased Ashok nor any of his family member nor by any other relatives of him. So the financial position of the family members of Late Ashok was not in crisis with utilisation of such huge funds. The Bank deal with the



public money and it is duty of the Bank for safe custody/ utilisation of such money. As such it requires the trustworthy employers to deal with such money. Considering above misdeeds of late Ashok D. Andharia, the reliability of the 2nd party disputant in dealing such public money is doubtful, as such nature is inherited by a person genetically or from the circumstances where it brought up. So appointment of the disputant Ankit in the Bank may be detrimental to the interest of the Bank. On these scores prayer is made to dismiss the reference under section 10 of the I.D. Act and that the disputant (the 2nd party) is not entitled to the relief as prayed for.

4. In view of the pleadings of the parties the following issues are taken for discussion and for determination in this case.

### ISSUES

(i) Whether the reference is maintainable?

(ii) Has the disputant/2nd party got valid cause of action to raise dispute in this case?

(iii) Whether the disputant Ankit Ashok Andharia is entitled for his compassionate appointment with effect from 10.09.2005 in the service of the 1st party Bank and for claim of arrears of pay from 10.09.2005 and for any other benefits?

(iv) Whether the action of the management of Bank of Saurashtra (now State Bank of India) Bhavnagar for not giving opportunity to Shri Ankit Ashok Andharia for his compassionate appointment as per scheme of Bank is legal and justified?

(v) What orders are to be passed?

**5. Issues No III:—** The 2nd party and the 1st party both have adduced oral and documentary evidence in support of respective case. The disputant 2nd party filed his affidavit in lieu of examination in chief *vide* Ext. 37 and he was cross examined by the lawyer of the 1st party. The 1st party examined in the court two M. witness No. 1 is shri Jaidev Jaintilal Pathak, Dy. Manager, S.B.I. Branch, Ahmedabad and was cross examined by the 2nd party's lawyer. His oral deposition is *vide* Ext. 44. The 1st party also examined another witness namely Laxman Rai, Asst. General Manager at Ext.-48.

6. The 2nd party disputant has submitted following documents which have been taken is documentary evidence. Ext. 13 is copy of appointment letter of deceased employer Ashok dated 23.05.1983 by the Bank. Ext.-14 is death certificate of deceased ashok dated 19.06.2002 during the course of employment. Ext.-15 is birth certificate of disputant Ankit Ashok Andharia, showing birth date 16.08.1987 in municipal record. Ext.-16 is birth certificate as per municipal record of Pujaben d/o deceased Ashok showing birth date 18.06.1991 Ext.-17 is copy of disability certificate of Pujaben showing deaf and dumb by birth Ext.-18 is copy of mark sheet of disputant Ankit of S.S.C.

exam. March-April 2002 Ext.-19 is copy of policy framed by the bank for appointment on compassionate ground dated 12.04.1999. Ext. 20 is copy of order dated 07.06.2005 issued by Bank appointing Bhartiben G. Mandani is clerical cadre on compassionate ground. Ext. 21 is copy of the application and form to the Bank by purnimaben widow of deceased employee Ashok dated 24.07.2002 for inclusion in service on compassionate ground received by the Bank with endorsement. Ext. 22 is letter addressed to Purnimaben by Kumbharwada Branch of the Bank dated nill as Sl. N. KUMB/SL/1010. Ext. 23 is letter written by the Dy. General Manager (personnel and H.R.D) to Advocate of Purnimaben dated 31.01.2003 Ext. 24 is copy of application dated 18.12.2003 of Purnimaben to include her son Ankit in service on compassionate ground received by the Bank with endorsement there to Ext. 25 is copy of application of Ankit (disputant) dated 02.11.2004 addressed to the Managing Director for including him in service on compassionate ground received by the Bank. Ext. 26 is certified copy of the application dated 09.09.2005 of Purnimaben widow of Ashok filed in civil suit No. 66/2003 in the court of Civil Judge (J.D) praying for withdrawal of the Civil Suit filed against the Bank. Ext. 27 is the copy of application of disputant Ankit dated 10.09.2005 to the Deputy General Manager to include him in service on compassionate ground, received by the Bank. Ext. 28 is the copy of the demand letter of the 2nd party Union dated 29.10.2005 sent to the Bank. Ext. 29 is two registry receipt of the post of demand letter. Ext. 30 is two Acknowledgement receipts of the demand letter received by M.D.S.B.S. and Deputy General Manager, Bhavnagar. Ext. 31 is written reply dated 15.02.2006 before the conciliation officer. Ext. 32 is original letter dated 11.06.2005 of the Bank for seizing/forfeiting the amount of provident fund of Rs. 3,96,805/- in the loan a/c sent to purnimaben widow of Ashok Andharia. Ext. 33 is copy of order passed by controlling authority payment of gratuity Act central in application No. 22/2004 of Purnimaben filed against Bank, Bhavnagar. Ext. 34 is certified copy of the order of Criminal Court dated 05.08.2004 in criminal case No. 181/2002 filed by the Kumbharwada branch of Bank against Ashok Andharia (deceased employee) dropping the case against deceased Ashok. Ext. 35 is certified copy of order of the C.J.M. dated 27.08.2004 in criminal case No. 3963/2002 as to dropping of the criminal proceeding against Ashok on the ground of death. Ext. 36 is certified copy of the charge sheet arising out of F.I.R. No. 139/03 dated 08.10.2003 submitted in criminal trial No. 3962 of 2005.

7. On behalf of the 1st party (Bank) Annexure-I is zerox copy of written admission dated 20.11.2001 made by Ashokbhai Andharia before the Branch Manager, State Bank of India, Kumbharwada, Branch, Bhavnagar. Annexure-II is copy of circular dated New Delhi 19th February, 2002 of Government of India/Ministry of Finance/ Department of Economic Affairs (Banking Division) on the

subject of scheme for appointment of dependants of deceased employees on compassionate grounds. These two Annexure are attached with the w.s. of the 1st party *vide* Ext. 6. Ext 10/1 is the circular no. PER/55/2005-2006 dated 02.02.2006 of State Bank of Saurashtra H.O., Bhavnagar on the new scheme for payment of ex-gratia Lumpsum amount in lieu of appointment on compassionate grounds. Ext. 43/1 to 43/8 are documents of the 1st party filed on 28.04.2011 with list Ext. 43 and its copy received by the 2nd party union. These are copy of Panchnama dated 29.11.2001, copy of letter written by A-Division Police station, Bhavnagar to Manager, Kumbharwada Branch, State Bank of Saurashtra dated 28.11.2001, copy of letter written by A.G.M. to the Manager S.B.S. Kumbharwada dated 26.11.2001, copy of letter written to police Inspector, A-Division, Policy Station, Bhavnagar by Shri J.J. Pathak, Branch Manager to the Manager, S.B.S. Kumbharwada dated 26.11.2001, copy of the admission given by Ashok Andharia to the Manager, State Bank of Saurashtra, Kumbharwada branch, Bhavnagar dated 23.11.2001, copy of admission given by Ashok (the workman dated 20.11.2001, copy of the F.I.R. lodged against Ashok Andharia by the Bank and copy of chargesheet issued by the C-Division, Police Dept. in F.I.R. 137/2003 lodged by Mr. L.B. Vania, Manager of Krishnanagar branch. The 1st party has also produced copy of the complaint given by the L.B. Vania, Branch Manager to A-Division, Bhavnagar Police sub Inspector along with relevant papers in pursuance of fraud committed by Mr. Ashok Andharia.

8. Shri Amirsh Patel, Advocate for the 2nd party has argued that deceased Ashok D. Andharia was appointed in clerical cadre the 1st party Bank on 23.05.1983 and he continued work when he died on 19.06.2002. It has been further argued that though the management of Bank put him under suspension prior to his death but no domestic enquiry had been initiated against Ashok and though criminal cases were lodged against Ashok by branch Manager, Kumbharwda branch and Branch Manager, Krishnanagar Branch with allegation of fraud and misappropriation of huge amount of money of Bank by him during his tenure of working in Krishnanagar and Kumbharwada branch but those case against him was dropped due to his death on 19.06.2002 and so the criminal charges of misappropriation was not proved against Ashok. It has been further argued that the Management of Bank could not impute and proved the allegation of misconduct under domestic enquiry as no any departmental enquiry was proceeding against him and so it cannot be proved that Ashok Andharia had defalcated huge amount of public money held in the Bank. Further, advancing arguments Mr. Patel submitted that firstly, there was no impediment before the Bank management in refusing the application of Ashok's widow, Purnimaben, When she presented herself for compassionated appointment *vide* Ext. 21 dated 24.07.2002 and that reply of Bank *vide* Ext. 22 & 23 is showing in different, partial and bias attitude adopted against the family

of the deceased Ashok Andharia. It has been further argued that though the widow Purnimaben filed Civil Suit against the Bank authority for getting relief for her compassionate appointment but she withdrew the Civil Suit on 09.09.2005 and then *vide* Ext. 27 the disputant had filed application for his compassionate appointment on 10.09.2005 where he attained majority on 16.08.2005 according to his date of birth 16.08.1987 as per Ext. 15 and so if Bank refused compassionate appointment of widow Purnimaben then Bank ought to have considered application of disputant Ankit *vide* Ext. 27 by no reply was given to his application and the Bank authority sat tight over the matter adopting in different attitude. Further, argued that the old scheme of compassionate appointment as per Ext. 19 was applicable in the case of disputant Ankit and the new scheme of 2006 is not applicable as to giving compensation instead of compassionate appointment. Mr. Patel in his argument tried to convince through Ext. 20 that under the old scheme the Bank authority had issued appointment order 07.06.2005 to on Bhartiben G. Mandani in clerical cadre. It had been argued that under clause 6 (c) which deals with method of appointment can be extended up to 4 years for appointment of minor on compassionate ground and even up to 6 years and so the Bank cannot go beyond the old scheme of compassionate appointment which was prevailing but the 1st party Bank by not appointing the disputant Ankit as per Ext. 27 has violated the scheme of compassionate appointment prevailing in the year 2005 by not giving appointment to him without assigning any reason and even by not replying to the disputant through the Union in making demand in right perspective. In support of the argument so advanced the 2nd party has cited the following case laws:—

(1) Gujarat State Road Transport Corporations Kalubhai H. Valand on point that demand of compassionate appointment in an Industrial Dispute 2(K) of the I.D.A.

(2) Jaishankar Prasad Sharma vs. State of Madhya Pradesh 1994 II LLN 258 Madhya Pradesh High Court on interpretation of word "discretion".

(3) Surinder Sinh Vs. State of Haryana 1996 Lab. I.C. 1375 Punjab, Haryana High Court on the point that change in policy/scheme of compassionate appointment shall have no retrospective effect when the application was pending for consideration under previous policy/scheme.

(4) Tarun Chakravarti Vs. State of West Bengal 1996 (1) C.L.R. 136 Kolkata High Court in this case petitioner's father employee of Board died on 11.03.1992 and the petitioner applied for appointment on compassionate ground on 28.12.1992 on the basis of scheme existing on the date of death of his father but prayer rejected on the ground that by a circular dated 30.04.1992 the old scheme was replaced by a new scheme of one time financial benefit in view of employment as this new scheme brought into force with retrospective effect from 01.04.1990. It was held

that petitioner's right under old scheme cannot be taken away.

(5) *Prasant Kumar Ray Vs. United Bank of India* 2002 Lab I.C. 2887 Jharkhand High Court which is one the point that son of deceased employee entitled for compassionate appointment under original scheme and that revision of scheme subsequently shall have no retrospective effect.

(6) *K. Apsara Vs. Andhra Pradesh Road Transport Corporation* 1998 (1) CLR. 1130 Andhra Pradesh High Court. On the point of prescribed under administrative instruction regarding applying for compassionate appointment cannot be treated on par with statutory limitation and that widow's request turned down on ground that her husband died when he was placed under suspension pending departmental enquiry.

(7) *Vijaya Bank Vs. Jayamma* 2003 Lab I.C. 3226 Karnataka High Court—Employer Bank seeking approval of Central Govt. stating financial position of family of diseased employee approval not granted on technical ground that disciplinary proceedings were pending against diseased employee direction of single Judge directing to make appointment not invalid.

(8) *Durgesh Kumar Tiwari Vs. State Bank of India* 2004 Lab I.C. 2846 Allahabad High Court. On the point as to denied of compassionate appointment without indigent circumstances cannot hold good.

(9) *Smt. Padma Pathak Vs. Punjab National Bank*, 2004 Lab I.C. 3694 Allahabad High Court. Authorities are bound to apply liberally the object of beneficial legislation on compassionate appointment and not to reject taking vindicate the attitude that the petition had on self-required residential home of the value of two lacs.

(10) *P. Ravi vs. Chief Engineer, Madras*-2002 (4) LLN 1132 Madras High Court-second request for compassionate appoint shall be treated as on the renewal of request made earlier within the period of three years.

(11) *Shantilal K. Solanki Vs. Union of India*, 2002 (3) 2417 Gujarat High Court-Delay of three years in making application after attaining majority rejected by central Administrative Tribunal on the ground of delay-delay can be condoned.

(12) *Pravichandra Jeram Sindhal Vs. Gujarat State Road Transport Corporation* 1993 (2) G.L.R. 1663—such humanistic appointment on compassionate ground should never be taken as merely shown to some beggar. It is a right to bread to the family and under the pretext of technical ties or some rules should not be denied.

(13) *Gujarat State Road Transport Corporation Vs. Workman of G.S.R.T.C.*-2005 (3) G.L.H. 116 object of compassionate appointment is to mitigate the hardship of the bread earner.

(14) *Smt. Sushma Gosain & others Vs. Union of India and others*-1983 (47) F.L.R. 42 S.C.—There should not be any delay in compassionate appointment, keeping such care pending for years not proper-supernumerary post showed be created to accommodate the applicant.

(15) *Smt. Phoolwati Vs. Union of India* AIR 1991 S.C. 469—Appointment of compassionate ground should not be delayed.

(16) On the other hand Miss Meenaben Shah learned lawyer for the 1st party argued that as per Ext. 10/1 in the new circular dated 02.02.2006 of State Bank Saurashtra, H.O., Bhavnagar introduced new scheme for payment of ex-gratia lumpsum amount in lieu of appointment on compassionate ground by which the old scheme of giving appointment on compassionate ground to the ward of employee, died in harness has been superseded and so the disputant/union's demand for appointment on compassionate ground is quite unwarranted and improper. It has been also submitted that if it is taken for the sake of argument that the old scheme as per Ext.-19 upon which the 2nd party has relied that the old scheme shall be applicable in the case of the disputant, even then as per para-6 (C) (method of appointment) the application requesting for appointment of ward who was minor must be received by the Bank within a year of the death of the employee then such case can be considered by the Managing Director of the Bank within his discretionary powers. Further arguments of the 1st party is that the application of Ankit (present disputant) Ext.-25 is dated 02.11.2004 for his compassionate appointment was filed much beyond stipulated period of one year and the application of Purnimaben dated 18.12.2003 was also filed beyond the period of one year from the death of the deceased employee Ashok and the application of Ankit dated 10.09.2002 (Ext.-27) was filed after more than three years which was not entertainable as per provision to para 6(c). It has been further argued by Ms. Meenaben learned counsel that the widow Purnimaben for herself requested by filing application dated 24.07.2002 (Ext.-21) for her compassionate appointment which was rejected by the Bank and though Purnimaben challenged the rejection order communicated (Ext.-22 and 23) by filing Civil Suit No. 66/2003 but preferred not to contest and withdraw the suit by filing withdrawal application on 09.09.2005 and order of Bank as to rejection of her application for compassionate appointment remained unchallenged. It has been further argued that Ashok Andharia while service in Bank has misappropriated huge Bank money and he clearly admitted in his self-statement dated 20.11.2001 (Annexure-I) to w.s. Ext.-6 that he misappropriate the amount at different branches. He was suspended and criminal case was also filed but before starting disciplinary proceeding in departmental enquiry he died on 19.06.2002 and consequently criminal cases as per criminal Justice system was dropped against deceased who died). But still his admission dated 20.11.2001 and 23.11.2001 regarding



misappropriating public money held in the Banks are available to show the shrewd and evil character of the deceased employee Ashok. It has been further argued that the case laws cited on behalf of the 2nd party are not applicable in this case for providing relief to the disputant. In support of argument the 1st party has relief upon the following case laws:—

(1) State of J&K and others vs. Sajid Ahmed Mir 2006 (110) FLR 883 Supreme Court where it has been held by their Lordship—father of the applicant died in 1987—application given in 1991—claim rejected in 1996 challenging the order of rejection has rightly been rejected by the single Judge on the ground of delay and laches.

(2) Divisional Controller G.S.R.T.C. vs. General Secretary, Kheda Vibhag S.T. Karmachari Mandal (2011(3)) LLN 257 Guj. Respondent's application for compassionate appointment filed 2 years and 6 months after attaining majority which was rejected by the petitioner. It has been held that benefit of such compassionate appointment could not be availed of any point and same has to be regulated as per policy formulated by employer—once time limit for making an application for compassionate appointment had expired, it could not be extended without there being any provision in scheme.

(3) Gujarat State Road Transport Corporation vs. Legal heirs of Noormohmed Ibrahim Patel oral Judgement dated 01.08.2005 in S.C.A. No. 4688 of 2005. On point of time limit, application of compassionate appointment if expired cannot be entertained and the discretion showed exercise only by Bank. Accordingly, when application is filed within time summing up argument, it has been submitted by Ms. Meenaben Shah, Advocate that the disputant the 2nd party is not entitled to get any relief in this reference and the reference is fit to be rejected.

10. Now coming to examine Ext.-19 scheme for appointment on compassionate ground for dependents of deceased employer (updated up to November 1998) para/section 6(b) says that request for appointment under the scheme should be received by the Bank at the earliest and in any case not later than one year from the date of death of the employee... para/section 6(c) clearly says that in case the dependant is a minor or does not possess suitable minimum educational qualification his/her case can be considered within four years of the death of the employee to enable him/her to so qualify in terms of age avail/or acquire minimum educational qualifications, provided such a request is received by the Bank within a year of the death of the employee. Such cases can be considered by the Managing Director of the Bank within his discretionary powers. There is also provision to cl. (c)(1)—In case, the dependent to be offered appointment is a minor, the offer of appointment may be kept open beyond a period of 4 years upto maximum period of six years from the date of death of the employee, subject to the condition that such

requests are received by the Bank within a year from the date of death of the employee. So it is manifestly clear that in any case either for an adult ward or for a minor request must be received by the Bank within a year of the death of the employee. The first request for Ankit (disputant) was made by his mother Purnimaben widow of deceased employee Ashok on 18.12.2003 (Ext.-24) after one and half year of death. Admittedly, Ashok died on 19.06.2002, so as per para 6(c) request through application ought to have been made by 18.06.2003. The second request by Ankit himself who is said to be minor was made on 02.11.2004 (Ext.-25) after about two and five months of death of his father Ashok. As per date of birth of Ankit vide Ext. 15 being 16.08.1987, he was about 17 years of age still a minor so minor is not supposed to file request application for his compassionate appointment. It was upon Purnimaben, the widow to make first request with the Bank Authority for her minor son Ankit within one year positively. But Purnimaben intentionally did not make such request for Ankit (disputant) rather she herself put her candidature making request for inclusion in service by filing application and filling requisite form to the Bank vide Ext.-21 on 24.07.2002. Her request was rejected by the Bank Authority on 31.03.2003 vide Ext.-23, the communication made to her Advocate and also to her vide Ext.-22. Even her minor son Ankit within one year of death of Ashok upto 18.06.2003 rather she herself challenged the order of rejection of Bank Authority by filling Civil Suit 66/2003 in court of Civil Judge (J.D.), Bhavnagar and these case remained pending upto 09.09.2005 before Civil Judge (J.D.), Bhavnagar. Though she had sought for the relief of setting aside the order of Bank dated 31.01.2003 and for direction to give her compassionate appointment by excluding the scope of filing request application for her minor son Ankit within one year of stipulated period as per clause C of para/section 6 of the compassionate appointment rules. In such view of the matter, there remains no sanctity for the disputant Ankit to file application dated 10.09.2005 to Deputy General Manager to include him a service on compassionate ground. His such application apparently submitted much beyond the period of one year as per section 6 (c) & proviso (1) so the Bank Authority has had no obligation to entertain such request application of disputant and if the bank authority did not reply to the disputant about fate of his application dated 10.09.2005 that will not give any impetus to the disputant to make dispute through the Union raising demand for compassionate appointment and cannot also invoke as to extension of period up to 4 years or even up to 6 years in case of request made by minor because of proviso that request must be made for minor within one year from the death of the employee. So the dispute raised by the Union by challenging the action of the Bank management in not giving compassionate appointment to Ankit Ashok Andharia is itself devoid of merit. Had it been the situation that on rejection of request application of widow Purnimaben by the Bank Authority vide Ext. 22 and 23, if



the dispute would have been raised through the Union challenging the rejection order and seeking relief for her compassionate appointment, the matter might have been quite different because her request application vide Ext.-21 had been submitted within one year as per Para 6(b) of the Scheme 1999. Whereas she for herself remained fighting out litigation against Bank in Civil Suit No. 66/2003 up to 09.09.2005, without any judgement in the Civil Suit rather opted to withdraw the suit unconditionally vide Ext. 26. So once the order of Bank authority dated 31.01.2003 (Ext.-22 & 23) became final and unchallenged without raising industrial dispute against that rejection order on without pursuing the litigation in civil Suit No. 66 of 2003, the subsequent dispute vide Ext. 27 application dated 10.09.2005 and the demand letter of the Union dated 29.10.2005 vide Ext.-28 have no legs to stand.

11. More so, the date of birth of the disputant Ankit as mentioned at Para-VII of the statement of claim being 06.06.1983 go to discard the date of birth of Ankit being 16.08.1987 as per Ext. 15. If Ankit's date of birth is taken as 06.06.1983 as per statement of claim para-VII then he attained majority (18 years) on 05.06.2001. That means during lifetime of employee Ashok D. Andharia and when Ashok died on 19.08.2002 then also Ankit's application dated 02.11.2004 vide Ext. 25 was submitted much beyond one year, so, the oral evidence of Ankit by way of affidavit Ext.-37 is fit to be discarded for laying claim for his compassionate appointment. On the other hand the oral evidence of two management witnesses vide Ext. 44 and 45 are worthy of credence who fully stood the test of cross examination by the 2nd party. Whereas the 2nd party has gained nothing to discredit their testimony.

12. In view of the discussion made above, I find and hold that the disputant Ankit Ashok Andharia is not entitled for his compassionate appointment with effect from 10.09.2005 or from any future date since his claim is devoid of any merit. As such claim for arrears of pay from 10.09.2005 and for any other relief are proved to be futile attempt and so are redundant. This issue No (iii) is decided against the 2nd party.

13. **ISSUE NO. (iv):**—As per findings given to issue No(iii) in the foregoing, I further find and hold that the action of the management of Bank of Saurashtra, Bhavnagar, for not giving opportunity to Shri Ankit Ashok Andharia for his compassionate appointment on his application dated 10.09.2005 is legal and justified. This issue is accordingly answered in favour of the management of Bank of Saurashtra (the 1st Party).

14. **ISSUE NO. (i) & (ii):**—In view of the findings to issue No (iii) and (iv) in the foregoing, I further find and hold that the reference is not maintainable and the

disputant/2nd party has no valid cause of action raise the Industrial dispute.

15. **ISSUE NO. (v):**—This reference is devoid of merit and so, it is rejected/dismissed on contest by the 1st party (Bank). However no order as to cost.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2013

**का०आ० 2676.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अहमदाबाद के पंचाट संदर्भ संख्या 1230/2004, को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/12/2013 को प्राप्त हुआ था।

[सं० एल-41012/117/2000-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd December, 2013

**S.O. 2676.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 1230/2004 of the Cent.Govt.Indus.Tribunal-cum-Labour Court, AHMEDABAD (GUJARAT) as shown in the Annexure, in the industrial dispute between the management of Western Railway, Divisional Office, Kothi Compound and their workmen, received by the Central Government on 03/12/2013.

[No. L-41012/117/2000-IR (B-I)]

SUMATI SAKLANI, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD**

**PRESENT :**

Binay Kumar Sinha,

Presiding Officer, CGIT-Cum-Labour Court,

Ahmedabad, Dated 31st January, 2013

**Reference (C.G.I.T.A.) No. 1230 of 2004**

**Reference (I.T.C.) No. 21 of 2003 (old)**

1. Divisional Railway Manager,  
Western Railway, Divisional Office,  
Kothi Compound,  
Rajkot-360001

2. Senior Commercial Inspector,  
Western Railway, Divisional Office,  
Kothi Compound,  
Rajkot-360001

...First Party

And

Their Workman,  
Shri C.H. Jadeja  
Through the branch Secretary,  
Gujarat Rajya Ardh Sahkari Audhyogik Karmachari Sangh,  
215, Amardeep Complex, 2  
Rajputpara, Rajkot-360001

...Second Party

For the First Party: Shri Janak R. Pandya, Advocate  
(holding Power but absent)

For the Second Party: Shri R.C. Pathak, Advocate  
Shri V.D. Mehta, Advocate

### AWARD

The government of India/Ministry of Labour, Shram Shakti Bhavan, Rafi Marg, New Delhi by its order No. L-41012/117/2000-I.R.(B-1) dated 15/07/2003 in exercise of powers conferred by cl.(d) of subsection (1) of section 10 of the I.D. Act, 1947 referred the dispute between the management of western Railway, Rajkot and their workmen for adjudication to Industrial Tribunal, Rajkot as per terms of reference under the schedule:

### SCHEDULE

"Whether the action of the management of DRM, Western Railway, Rajkot in terminating the services of Shri C.H. Jadeja w.e.f. 06.04.1986 is justified? If not, what relief the applicant is entitled?"

2. Parties were noticed to appear and to file respective pleadings. The 2nd party appeared and submitted statement of claim (Ext.-4) on 06.05.2004. His case is that he (C.H. Jadeja) was engaged as waterman in hot weather section from 21.02.1980 under wankaner Rly station (W.R.) and Lakhamachi Rly Station and was allowed works up to 1986. Thereafter, his service was dispensed with without any written order, without following the provision of section 25 F, G, H of the I.D. Act. He was given employment during hot weather every year from 1980 to 1986 and he completed more than 360 days. He was paid the salary as per rules by the 1st party. He was entitled for regularisation in service, his name was enrolled in the seniority list, but 1st party regularised the services of Juniors to him who had completed less number of working days examples by mentioning names of some juniors to him is shown at para 5 of the statement of claim.

(i) Rameshbhai working under P.W.I. Dwarika joined service on 22.12.1983.

(ii) Balabhai Chakubhai working under P.W.I., Rajkot, joined service on 23.03.1982.

(iii) Manikram Malan worked only for about 4 months from 14.04.1983, under chief permanent Inspector, Rajkot have been regularised as cleaner in Ahmedabad depots.

Similarly, other juniors—Dhirubhai Ramjibhai, Ramzan Abdul are also continuing and have been regularised by the 1st Party.

Further, case is that he (C.H. Jadeja) requested on many occasions to the officers of the 1st party verbally and also in writing to consider his case and to reemploy him but all efforts proved of no avail. He is unemployed since his termination. So prayer is made for treating termination of the 2nd party (workman) illegal and the 1st party be directed to reinstate him on his original post or on equivalent post with continuity of service with full back wages and cost of litigation.

3. It is not out of place to mention that in spite of repeated notice and reminders to the 1st party for appearance and for filing written statement to the S/c of the 2nd party, the 1st party did not appear. On the other hand, the 2nd party submitted documents as per list Ext-7 on 24.07.2009. The 2nd party also submitted affidavit (Ext-8) of workman C.H. Jadeja on 24.07.2009. The 2nd party was filing pursis to close the right of the 1st party to file w/s. and to cross examine the workman (the 2nd party) then a vakilpatra (ext-10) was filed by the 1st party on 11.01.2010 executing it in favour of Shri Janak R. Pandya, Advocate. But, thereafter neither the 1st party nor its lawyer attended the court in this case where reference was pending in the Industrial Tribunal, Rajkot. The case, thereafter, received in this C.G.I.T.-cum-Labour Court on transfer. From this tribunal also fresh notices were issued to the parties. The second party appeared in this Court/tribunal and filed pursis Ext.-16 to the effect that 2nd party (workman) is facing starvation due to unemployment. And he is waiting for justice since long. Also praying to close the stage of filing w.s. and cross examination of workman (the 2nd party) on his affidavit deposition in lieu of examination in chief. It was also prayed for fixing the matter for final hearing in camp at Rajkot. Even on 26.04.2011, 21.07.2011 and 19.04.2012, the 1st party or its lawyer did not attend this case at Rajkot camp. So all stage of the 1st party was closed. The 2nd party submitted written argument *vide* Ext.-17 and lawyer of the second party made oral argument and then the matter was kept reserve for award.

4. The points for determination is whether the 2nd party workman C.H. Jadeja is entitled to the relief as claimed as per statement of claim coupled with supporting oral and documentary evidence?

### FINDINGS

5. Ext-17 is service card of C.H. Jadeja as casual labour that go to shows his initial appointment on 21/02/1980. That also go to show his nature of assignment as M.B. under I.O. (c) II Western Railway KMBL. Ext-18 is service card showing period of employment from 02/04/1982 to 06/04/1986 as hot weather waterman duly signed with stamp of station supt. Wankaner Rly station, W.R. Ext-19 is application of C.H. Jadeja for grant of T.S. (Temporary status) mentioning details of work as hot weather waterman from 21/02/1980 to 06/04/1986 containing also signature and stamp of station master Wankaner and Lakhamanchi Rly. station. Ext-20 is order of DRM (E) Rajkot refusing to grant temporary status (T.S) to Shri C.H. Jadeja on the ground that he has not completed 120 days after 1985 as in terms of instruction *vide* Rly board letter No. E/NG.11/83/C.L/117 dated 25/01/1985, temporary status can be granted if total working days are minimum 120 days in between two spells. Ext-21 is order of DRM (E) Rajkot on the subject of engagement of substitute old face, its copy sent to Shri C.H. Jadeja asking him to contact (M)/TT for his engagement as substitute. Ext-22 is letter dated 07/07/1992 of commercial Inspector, W.R. Rajkot to C.H. Jadeja that as per DRM (E) Rajkot letter No. ET 891/2 vol. VI dated 21/07/1989 you are shown at SL No. 174 at LMC data in which your date of appointment is shown 02/04/1982 as such I am not in a position to engage you anywhere on my beat as you have not worked prior to 14/07/1981. As against this, it is manifestly clear that initial appointment of C.H. Jadeja is 21/02/1980 as per Ext-17. Ext-23 is Advocate's notice on behalf of C.H. Jadeja to the Sr. Commercial Inspector on Divisional Rly. Manager, W.R. Rajkot for grant of T.S. to Shri C.H. Jadeja, with all consequential benefits. Ext-24 is A.D. of this notice duly received by the 1st parties. Ext-25 is application of C.H. Jadeja dated 21/07/1993. Ext-26 is its A.D. in token of receipt of application. Ext-27 is another letter of C.H. Jadeja dated 16/06/1992 to DRM (E), Rajkot, on subject of engagement of substitute old face. Ext-29 is copy of order (oral order) dated 26/02/2002 of Hon'ble Gujarat High Court in S.C.A 1549 to 2001 (C.H. Jadeja vs Union Bank of India) wherein observation/direction was made by the Hon'ble court to the appropriate Government to pass order on reconsideration of Industrial Dispute within two months from the date of receipt of such review application of the petitioner (C.H. Jadeja).

6. It was argued by the learned lawyer of the 2nd party that Ext-20 the letter of the 1st party dated 25/02/1992 is not in the true spirit rather it is admitted position that C.H. Jadeja or the similar situated workman are entitled for the benefits of T.S. etc. after completing the services of 120 days and that in the said letter the management has given a wrong cut-off date regarding completion of 120 days after 1985 and so such letter of the 1st party informing to the 2nd party (C.H. Jadeja) is not legal and proper and also

not supported by any documents. More so, the 1st party by not contesting this reference case has failed to prove authenticity of Ext-20. On behalf of the 2nd party case law of Indrapal Yadav vs. Union of India [1985(2) SCC 648] has been cited in support that the benefit of T.S. are required to be granted from 1981 onwards. Similar direction is also given by the Hon'ble Apex court in the case of Ramkumar & others vs Union of India [1988 (1) SCC 306 S.C.].

7. It appears from perusal of Ext-21 and 22 that management of the 1st parties are itself in confusion by not negating the decision and directing Shri C.H. Jadeja (S.P.) to contact C.M.I./T.I for engagement on one hand and on the other hand *vide* ext-22 informing to Shri C.H. Jadeja that he has not worked prior to 14/07/1981 whereas it is proved that Shri C.H. Jadeja was working as hot weather waterman from 21/02/1980 as per Ext-17. More so, the oral evidence of Shri C.H. Jadeja *vide* Ext-8 has remained intact and unchallenged since the 1st parties failed to avail opportunities of cross-examining him.

8. From scrutinising the oral and documentary evidence coupled with the two case laws cited on behalf of the 2nd party I find and hold that the service of Shri C.H. Jadeja(S.P.) was illegally terminated by the 1st party. If the services of Shri C.H. Jadeja would not have been terminated then he must have received the benefit of temporary status (T.S) and pay scales etc. The 2nd party has given the name of junior employees those who have been regularised and the benefit of T.S. and pay scale were granted to them. Such pleading taken in the statement of claim has also been substantiated in the oral evidence of Shri C.H. Jadeja *vide* Ext-8 and that has remained unchallenged. More so, the management of the 1st party are under obligation to maintain live register to provide re-employment to the retrenched workman but no such opportunity of re-employment was provided to the 2nd party (C.H. Jadeja) so, I further find and hold that the said action of the 1st party is obviously in violation of section 25H of the I.D. Act. More so, the 1st parties have flouted the provisions of section 25(F)(G) of the I.D. Act, 1947 and has also violated the principles of "last come first Go". So I find and hold that the action of the management of DRM, Western Railway, Rajkot in termination the services of Shri C.H. Jadeja w.e.f. 06/04/1986 is illegal, improper and unjustified. I, further, find and hold that Shri C.H. Jadeja (2nd party) is entitled for his reinstatement on his original post of Hot weather waterman or equivalent post with continuity of service and for granting of temporary status (T.S). The 2nd party is also allowed back wages 50% with interest 9% from the dated 06/05/2004 when the 2nd party appeared on notice and filed statement of claim (Ext-4).

9. The reference is allowed with cost of Rs. 1000. The 1st party are directed to reinstate the workman

Shri C.H. Jadeja on his original or equivalent post and for granting him continuing in service and to pay 50% of back wages for Hot weather waterman with 9% interest w.e.f. 06/05/2004 with two months of this award on publication.

This is my award.

BINAY KUMAR SINHA, Presiding Officer  
नई दिल्ली, 3 दिसम्बर, 2013

का०आ० 2677.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एच०डी०एफ०सी० बैंक लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अहमदाबाद के पंचाट (संदर्भ संख्या 111/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.12.2013 को प्राप्त हुआ था।

[सं० एल-12011/22/2012-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd December, 2013

**S.O. 2677.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 111 of 2012) of the Cent. Govt. Indus. Tribunal-com-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of HDFC Bank Ltd., Dawn Domestic Services, and their workmen, received by the Central Government on 03/12/2013.

[No. L-12011/22/2012-IR (B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### PRESENT:

Shri Binay Kumar Sinha,

Presiding Officer, C.G.I.T.-cum-Labour Court,  
Ahmedabad,

Dated 8th March, 2013

#### Reference: (CGIT A) No. 111 of 2012

1. The Manager,  
HDFC Bank Ltd.,  
Shilp-2, Ground Floor,  
Near Ashram Road,  
Ahmedabad (Gujarat)
2. The Manager,  
Dawn Domestic Services,  
D-12, Plot No.-88,  
Mohada Char Bungalow,  
Andheri (West)  
Mumbai

.....First Party

And

Their workman  
Through  
The General Secretary,  
Nav Jagrut Labour Union,  
18, Manjur Khan's Chawk,  
Ramnagar, Bhilwada, Amraiwadi,  
Ahmedabad (Gujarat) .....Second Party

#### AWARD

The Government of India/Ministry of Labour, New Delhi, by its order No. L-12011/22/2012-IR (B-I) considering that industrial dispute exist between the employers in relation to the management of HDFC Bank under section 10 sub-section 1(d) and 2(A) of the Industrial Dispute Act, 1947 to this Tribunal (CGIT-cum-Labour Court, Ahmedabad) or adjudication under the terms of reference mentioned under the Schedule:

#### SCHEDULE

"Whether the demand of the union Nav Jagrut Labour Union for reinstating S/Shri Vinod Kumar K. Pandav, Surpal Shankarbhai Pandav, Virendra Kumar Gangadhar Sharma and Manish Kumar Shankar Pandav on their original post by the management of HDFC Bank Ltd. Dawn Domestic Services with back wages etc. from the date of their termination i.e. 05.01.2011, is legal and justified? To what relief the workmen are entitled?"

2. After registering the case, notice were issued to the parties for filing statement of claim and written statement. On 31.01.2012, the 1st party No. 2 representative and Union's representative appeared in the case and were directed to submit respective pleadings.

3. On 08.03.2013, the 1st party No. 2 representative Shri Pankaj Rai and the 2nd party (Union) representative Shri M.R. Rajput appeared and filed memorandum of settlement (ext-5) containing the signature of four workman and also signature of Shri M.R. Rajput, Union General Secretary and Shri Pankaj Rai, proprietor/representative of the 1st party No. 2 (Dawn Domestic Service). The memorandum of settlement is moved jointly praying therein to dispose of the reference in terms of settlement heard both side. Perused the record and the joint pursis (memorandum of settlement vide Ext-5).

4. It has been conceded by the four workman that they have been deployed by that immediate employer-Dawn Domestic Services (the 1st party no. 2) as guards in the Bank premises of the 1st party No. 2 (HDFC Bank Ltd.) and due to misconception they have through the Union have demanded for reinstatement in the service of the principal employer (HDFC Bank Ltd.), but actually they are workman of the 1st party No. 2 Dawn Domestic Service and they are not workmen of the HDFC Bank Ltd. and there



is no relationship of employer and employee in between HDFC Bank Ltd. and them and that they had been deployed by the 1st party No. 2 to do duty at HDFC Bank Ltd. (the 1st party No. 1) and that now under settlement 1st party No. 2 had paid to them their all claims of retaining in service of 1st party No. 2, payment of gratuity and arrears of wages bonus etc. The 1st Party No. 2 also accepted that the four workmen are his employees and all their dues have been paid.

5. Now their is no dispute of the 2nd party Union/ four workman against the principal employer (1st party No. 1 HDFC Bank Ltd.) and the dispute of those four workmen/Union with the 1st party No. 2 Dawn Domestic Service have been settled as per ext-5. As such following award is passed:

### ORDER

The demand of Union and four workmen against HDFC Bank Ltd. (1st party No. 1) is rejected. These four workmen are the employees of the 1st party No. 2 (Dawn Domestic Services) and their demand have been meted out by the memorandum of settlement ext-5. So there remain no disputes for adjudication under the terms of reference. So the reference is rejected/disposed of accordingly.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2013

कांआ 2678.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ सौराष्ट्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट संदर्भ संख्या 1155/2004, को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/12/2013 को प्राप्त हुआ था।

[सं. एल-12012/104/2000-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd December, 2013

**S.O. 2678.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No. 1155/2004 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of State Bank of Saurashtra, Zonal Office, P.B. No. 7, State Bank of Saurashtra, Upleta Branch, Upleta, and their workmen, received by the Central Government on 03/12/2013

[No. L-12012/104/2000-IR(B-I)]

SUMATI SAKLANI, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### PRESENT:

Binay Kumar Sinha,

Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad, Dated 6th September, 2013

**Reference: (CGITA) No-1155 of 2004**

**Reference (I.T.C.) No 8 of 2000 (old)**

1. Regional Manager,  
State Bank of Saurashtra (Now State Bank of India)  
P.B. No. 7  
Swami Vivekananda Road, Rajkot (Gujarat-360002)

2. The Branch Manager,  
State Bank of Saurashtra (Now State Bank of India)  
Upleta Branch, Upleta,  
Rajkot (Gujarat) ...First Party

And their Workman  
Shri G.P. Jadeja  
C/o Saurashtra Kutch Majdoor Sangh,  
317, Panchnath Commercial Centre,  
Harihar Chowk,  
Rajkot, (Gujarat) ...Second Party

For the 1st Party : Shri B.B. Gogia, Advocate  
Shri Anand Gogia, Advocate

For the 2nd Party : Shri G.R. Thakar, Advocate

### AWARD

The Central Government/Ministry of Labour, New Delhi by its order No. L-12012/104/2000/IR(B-1) dated 30.05.2000 under Cl. (d) of sub section (1) and sub section 2(A) of section 10 of the I.D. Act, 1947 referred the dispute to Industrial Tribunal, Rajkot (Gujarat) for adjudication as to terms of reference as per the Schedule:

### SCHEDULE

"Whether the action of the Regional Manager, Zonal Office, State Bank of Saurashtra, Rajkot in removing the service of Shri G.P. Jadeja, Chwkidar, w.e.f. 23.12.1996 is just valid and legal? If not, what benefits the workman is entitled and the what directions are necessary in the matter?"

2. The case of the 2nd party (workman) as per statement of claim (Ext. 4) is that he was serving since many years in Upleta Branch of the bank as Watchman and was being paid monthly salary of Rs. 4200 and earlier he had not received any memo, warning nor any fine was imposed on him. But he being low grade employee was spited and a false and imaginary allegation was made against him regarding drunkenness during duty and leaving duty place and quarrelling etc. and he was suspended on

16.01.1993. Thereafter false chargesheet was served and fake departmental enquiry was conducted and criminal case was filed against him by Upleta police under section 66(1) (B) and 85(1) (B) of Bombay prohibition Act in Upleta criminal court in which he was exonerated. But during departmental enquiry against him judgment of criminal court was not considered and departmental enquiry was conducted against the principles of natural justice and with a view to remove him from the service, the enquiry officer submitted false and arbitrary report against him. On the basis of the findings of the enquiry officer a second show cause notice was issued to him by the Disciplinary Authority and he gave a detailed reply to the Disciplinary Authority on 23.06.1996. But his reply was not considered properly and punishment order dated 23.12.1996 was passed as to removal from the service with benefits of retirement. Against this he preferred departmental appeal before Appellate Authority. But his appeal was not considered and was rejected upholding the punishment order. His removal from the service w.e.f. 23.12.1996 of the Disciplinary Authority of the Bank is illegal and having colour of unfair labour practice. No notice was given nor notice pay was paid, nor unemployment compensation or any other amount was paid, provisions of section 9 (A) not followed the provisions of rule 81 of I.D Act rule was breached and provision of section 25(G) and 25(H) were violated. Since after removal from the services he (workman) could not get service elsewhere and he remained unemployed. On these scores prayer is made to set aside the punishment order dated 23.12.1996 and for reinstatement in service on his original post of watchman with back wages and consequential benefits and also to award cost of Rs. 2500 from the 1st party bank of him.

3. As against this the case of the 1st Party bank as per Ext. 6 is that the reference is not maintainable, the workman has no valid cause of action to raise dispute para 1 to 10 of statement of claim Statement of claim not correct and it has been denied that the workman had along continuous and faithful service. The case of the 1st Party further is that the workman was working a Chowkidar having very important and sensational duty to perform for the working of the bank wherein not only cash of the bank remains in lakh of rupees, but also customer come and go daily in large number with their cash amounts. He was appointed as Chowkidar in 1975 as stated with S/c. he was charge sheeted for the allegation of leaving duty place along with weapon at about 01:48 hours in a drunken condition, using filthy languages and abuses when he was arrested by Upleta police in drunken condition. A departmental enquiry was held against the charge sheet issued and the workman admitted to the charges during proper departmental enquiry and the E.O. submitted his findings holding the charges proved against the workman and then 2nd show cause punishment notice was given to the workman and full opportunity to defend himself and

then the punishment with the order of removal from services with all the retiral benefit was passed. Charges proved was of serious nature and so taking in to account his service tenure lenient view was taken in awarding punishment also considering para 19(1) of bipartite settlement and also as per settled legal position by the Hon'ble Supreme Court, there is no bar of departmental enquiry in case of criminal prosecution pending or even in case of acquittal in criminal trial. The workman was given opportunity of show cause notice served upon him and after such opportunity granted and considering the record and circumstances the punishment was decided and imposed and the departmental appeal preferred by the workman was also rejected after careful consideration. So in these circumstances the workman can have no grievances. It has been denied that the workman was entitled to notice or notice pay or retrenchment compensation. It is also denied that there is any violation of sec 9(A), 25 (G) and 25(H) of the I.D. Act or regarding not following seniority list or violating rule 81. It is also denied that the workman remained unemployed or has not been earning or is unemployed. On these contentions prayer is made to reject the reference since the workman is not entitled to get any relief.

4. It may be pertinent to mention that the pleadings as well as evidences documentary and oral and even written arguments were submitted before Industrial Tribunal, Rajkot who was in session of this case before this case record received back before this C.G.I.T.-cum-Labour Court on 20.01.2011 on transfer of the cases by the order of the Ministry of Labour, New Delhi.

5. In view of pleadings and rival contention of the parties, the following issues are taken up for determination:—

#### ISSUES

- (i) Whether the reference is maintainable?
- (ii) Has the delinquent workman G.P. Jadeja valid cause of action?
- (iii) Whether valid and proper departmental enquiry was held against the delinquent workman?
- (iv) Whether the order of punishment dated 23.12.1996 is shockingly disproportionate to the gravity of the misconduct under the charge sheet?
- (v) Whether the action of the 1st party bank is justified in imposing the punishment of removal w.e.f. 23.12.1996 with all retail benefits?
- (vi) Whether the 2nd Party (delinquent workman) is entitled for the relief as claimed?

#### FINDINGS

6. **ISSUE NO. iii:** The learned counsel on behalf of the 2nd Party even after filing pursis at Ext. 8 dated 05.03.2004 as to admitting the propriety of the departmental

enquiry held against him, again argued before this Tribunal and also submitted written arguments to the effect that principles of natural Justice was not followed opportunity not given even he was acquitted of the accusation under section 66(1) (B), 5(1) (3) of Bombay Prohibition Act filed by Upleta police in criminal case trial by Judicial Magistrate and so findings of the inquiry officer *vide* Ext. 13 is perverted. But such argument advanced by Shri G.R. Thakkar, Advocate learned counsel for the workman does not appear to be convincing in view of the argument of the learned counsel for the 1st Party Bank Shri B.B. Gogia, Advocate that the workman after filing pursis at Ext. 8 and also deposing in oral evidence at Ext. 9 only challenging as to quantum of punishment imposed upon him to be harsh and not as to validity or otherwise of the enquiry held against him. The pursis at Ext. 8 not challenging the validity of enquiry is as follows as per English translation from Gujarati ..... "I do not challenge the enquiry proceedings held against me in this matter but findings given are not proper and just. The punishment imposed upon workman as mention in the chargesheet excessive and harsh and so making prayer for lessor punishment invoking the power under section 11 A of the I.D. Act. From enquiry proceedings, Ext. 13 it appears that enquiry proceedings were commenced on 13.02.1996 (Tuesday) in connection with chargesheet vide No. RMR, DCP 268 dated 15.09.1995. The workman, Jadeja accepted to have received the chargesheet which was read over fully explained to him. Prior to that Bank asked the delinquent Jadeja to give reply to chargesheet within 15 days and giving one more extension of 15 days at his request, but the delinquent did not reply and requested for extension of one month time to give reply which was not granted and the departmental enquiry started on 13.02.1996 and at first instance the delinquent was asked to engage his defence representative and he (delinquent) nominated Shri R.A. Shah as his defence representative who was deputy general secretary of the Bank Union. Consent of Shri R.A. Shah was obtained and enquiry started. The delinquent accepted and admitted orally the charges levelled against him. Thereafter, he, the delinquent also presented the letter dated 13.02.1996 admitting all the charges in writing, expressing his sorrow by admitting mistake committed by him and requesting for kindness by bank by considering age and other circumstances. This admission letter was shown to Shri Patel, the presenting officer who stated to have no objection as it was unconditional and the P.O. consented to take it on record and there after the said letter of the delinquent was taken record of the enquiry. In this way the delinquent admitted the charges levelled against him in the chargesheet dated 15.09.1995, voluntarily and without any pressure in presence of his defence representative and the presenting officer Shri O.P. Patel and defence representative Shri R.A. Shah did not make any further submission and enquiry proceeding were declared as completed on 13.02.1996 and 16:40 hours. In the inquiry proceedings M-11/15 (Ext. 13) it

was stated by the defence representative that the delinquent wants to admit all the charges and submitted the letter dated 13.02.1996 in presence of the P.O. Shri Patel and defence representative admitting that he (delinquent) admits all the charges levelled against him in the chargesheet dated 15.09.1995. The presenting officer has no objection to this and therefore it was taken on the record and was admitted in the proceedings. So, it is evident that there was no need for proceeding further in the enquiry by calling the presenting officer to produce witness. More so, neither the delinquent nor his defence representative was eager for insisting on to produce management witness. So the enquiry was concluded in accordance with rule following the principle of natural Justice. The enquiry proceedings with report were submitted to the Disciplinary authority and second show cause notice was issued with copy of enquiry report to the delinquent and the delinquent made representation and thereafter considering all the circumstances punishment order was imposed. Ext. 14 is finding of the E.O. Ex. 15 is the second show cause (punishment) notice and Ext. 17 is final punishment order dated 23.12.1996. So it is evident that principles of natural Justice was observed at every stage and even before passing of the final punishment order dated 23.12.1996.

7. So as per discussion and consideration made above this issue is decided in favour of the 1st Party Bank that a valid and proper department enquiry was held against the 2nd Party workman G.P. Jadeja in connection with chargesheet dated 15.09.1995 at Ext. 12.

8. **ISSUE NO.iv:** As per charge sheet dated 15.09.1995 allegation against delinquent G.P. Jadeja is as follows—You have committed misconduct of serious nature as under during your duty as armed guard in Upleta Branch of the bank. Therefore, I Regional Manager Region R-1 levy charges on you as under—

#### **Charge 1**

On dated 14.11.1993 during your duty is early morning 01:45 hour in the state of intoxication of consuming liquor, uttering abuse leaving your post on duty unauthorisedly coming out of bank with arms of the bank were uttering abuse in public. In the meantime police of Upleta Police station had arrested you in intoxicated state as mention above under prohibition Act.

Thus during duty as guard, showing gross negligence to your duty consuming intoxicating liquor, uttering abuses in public, with arms and live cartridges given to you for protection of properties of bank you have committed criminal conduct of grievous nature among general public. Police had arrested you for the same. Thus as you did not do your duty as guard as per prevalent rules of the bank and by going out of the bank from your place of duty in intoxicated state unauthorisedly on public road and uttering obscenities, you were arrested by the police, which has caused heavy injury to reputation of the bank

and you have committed misconduct of grievous nature. Thus, you have committed offence as per clause 19.5(c), 19.5 (j), 19.7(c) of bipartite settlement.

9. It has been argued on behalf of the 2nd Party workman that when the workman G.P. Jadeja had been acquitted of the accusation under Bombay prohibition Act as per judgment of Criminal court dated 11.01.1996 in criminal case no 156/94 as per Ext. 47 then even if the delinquent workman admitted to the charge sheet dated 15.09.1995 during departmental enquiry on 13.02.1996 in writing, there was no justification in awarding such punishment of dismissal from the service which has caused economical death, rather lenient view ought to have been taken such as giving warning, censured or even with holding of increment with or without cumulating effect. It has been further argued relying upon the case laws (1) 2001(1) GLH (U.J) 15 (Kadabhai J. Suthar Vs. Divisional Controller (2) 2001 (89) FLR 434 Allahabad H.C. (Sadevsingh Vs. D.B. Patel and another (3) 1985 G.L.H. (U.J) 27 (Kalusingh Dhulding Vs. D.B. Patel) & others (4) 2006 (2) GLH.64 (F.B) Gujarat State Road Transport Corporation Vs.D.V. Chavan and (5) 2007 (3) GLH 392 Surat Municipal Corp. Vs. Rameshbhai D. Vaghela.

10. On the other hand discarding the above arguments of the 2nd Party workman, it has been argued by Shri B.B. Gogia, Advocate for the 1st Party that the punishment imposed upon the workman G.P. Jadeja is lenient one since having the serious misconduct of the workman under the proved chargesheet instead of dismissal without notice, he was awarded punishment of removal from the service with retrial benefits and pension, though the workman was holding a sensational post of armguard and cannot be expected to leave the duty place unauthorisedly and create a risk as to loss, loot of property of the Bank in the early hour at above 01.40 a.m. He advanced argument that the workman being armed guard in intoxicated position came out of duty place with gun and cartridges provided to him to protect the bank property and by his such serious misconduct bad elements might have overpowered him and might have found access inside bank for loot, damage of Bank's property and that he was arrested by Upleta police in intoxicated condition on road outside his duty place. He argued that according to bipartite settlement para 19.1 and also according to the settled legal position of the Hon'ble Apex Court, there is no bar of departmental inquiry in a case of criminal prosecution pending or even in case of acquittal of the workman. He argued that before imposing punishment, the delinquent was given opportunities of show cause notice served upon him and after such opportunities the punishment was decided and imposed and the departmental appeal preferred by the delinquent was also rejected. He summing up argument submitted that the punishment imposed upon the delinquent by order dated 23.12.1996 is not at all harsh and severe that go to shock the Judicial conscience of this tribunal for invoking

the power u/s 11-A of the I.D. Act either to set aside the punishment order or to modify alter the same. On behalf of the 1st Party Bank case laws (1) A.I.R., 2011 S.C. 1931 (State Bank of Bikaner and Jaipur Vs. Nemichand Nalwaye (2) 1997 Law suit (S.C.) 1089 Union of India Vs. SG. Ganyatham and (3) 2007 (4) GLR 3237 (M.K. Bharlala Vs. Bank of India) have been relied upon.

11. After careful consideration of the all the facts and circumstances and the material on the record and also taking in view of the case laws cited on behalf of the parties. I am of the considered view that there is no any ground to invoke Jurisdiction and to exercise power u/s 11-A of the I.D. Act, 1947 either to set aside or to alter/modify the punishment order dated 23.12.1996 imposed upon the delinquent by the Disciplinary authority. More so, the order of punishment. So awarded does not appear to be disproportionate to the gravity of misconduct proved in the departmental enquiry. The proof of charges under criminal trial demands strict proof beyond all reasonable doubts whereas the charge of misconduct in departmental enquiry only requires to be proved spontaneously and no requirement as to proof beyond all reasonable doubts.

12. This issue is decided against the 2nd Party workman.

13. **Issue No. V:** In view of the finding to Issue No. iii and iv in the foregoings, I find that the action of the 1st party bank is justified in imposing the order of removal w.e.f. 23.12.1994 with all retrial benefits. The issue is answered in favour of the 1st Party.

14. **Issue No. i, ii, and vi :** In view of the findings above, I further find and hold that the reference has got no merit, and is not maintainable since the 2nd Party workman has no valid cause of action to raise the dispute.

So, the reference is dismissed. No order as to cost.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2013

**कांआ 2679.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार स्टेट बैंक ऑफ सौराष्ट्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण, अहमदाबाद के पंचाट (संदर्भ संख्या 956/2004) को प्रकाशित करती है, जो केंद्रीय सरकार को 03/12/2013 को प्राप्त हुआ था।

[सं एल-12012/194/93-आई आर (बी-1) ]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd December, 2013

**S.O. 2679.**—In pursuance of Section 17 of the Industrial Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 956/2004) of the Central Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial



dispute between the management of State Bank of Saurashtra, and their workmen, received by the Central Government on 03/12/2013.

[No.L-12012/194/93-IR(B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### PRESENT:

Binay Kumar Sinha, Presiding Officer,

CGIT-cum-Labour Court, Ahmedabad,

Dated: 22/08/2013

**Reference: (CGITA) No-956 of 2004**

**Reference ITC No: 1/94 (Old)**

Zonal Manager,

State Bank of Saurashtra (Now S.B.I.)

Zonal Office, Rajkot (Gujarat)

...First Party (Management)

#### And

Their Workman

Hasmukh A. Rawal

Near Factory of Dept.

Ganjibara, Bhavnagar Road,

Rajkot

At present

Hasmik A. Rawal

C/o Suresh A. Rawal

Opp. Marketing yard,

Sant Kabir Road,

Bhagirath Society, Street No. 10

Opp-Khodiya floor Mills, Rajkot

...Second Party (Workman)

For the 1st Party: Shri B.B. Gogia, Advocate

For the 2nd Party: Shri Mahendra M Vadia,  
Advocate

#### AWARD

The Government of India/Ministry of Labour, New Delhi under the provision of clause (d) of sub-section (1) of section 10 of the I.D. Act 1947, by order No-L-12012/194/93-I.R. (B-I) dated 15-12-1993 referred the dispute for adjudication to Industrial Tribunal, Rajkot by formulating the terms of reference as per schedule:

#### SCHEDULE

"Whether the action of the management of State Bank Saurashtra, Zonal Office, Rajkot, in terminating the services of Shri H.A. Rawal w.e.f. 26-08-1992 is legal and justified. If not, to what relief the workman is entitled?"

2. Both parties appeared and filed pleadings-statement of claim at Ext.-4 by the workman (2nd Party) and the written statement at Ext. 9 by the Bank (1st Party). It may be pertinent to mention that the pleadings as well as evidence documentary and oral and even written argument were submitted before Industrial Tribunal, Rajkot and the Industrial Tribunal (Central) Ahmedabad since the state Industrial Tribunal remained for major period in session of this case before the case record received back before the C.G.I.T.-cum-Labour Court on 20-01-2011 on transfer of the case by the order of the Ministry of Labour, New Delhi.

3. As per statement of claim, it is the case of the workman that he was engaged as peon from 17-04-1989 in the Gymkhana Branch of the Bank and was allowed to continue up to 25.08.1992. It is also the case of the workman that he was orally terminated by the Bank without compliance of the provision of section 25F of the I.D. Act, 1947, whereas juniors were continued at that time of his termination and also many recruitments were made and that there is violation of section 25(G) and (H) and (N) of the I.D. Act, 1947. On this score relief has been sought for his reinstatement with full back wages and cost of the litigation.

4. As against this case of the Bank (1st Party) as per w/s is that the workman H.A. Rawal was only doing casual nature of work such as cleaning the water tank and shifting of record as and when required and that for these works he was submitting bills and the bank was paying on voucher. There was no relationship of master and servant between Bank and H.A. Rawal. The reference of master and servant between bank and H.A. Rawal. The reference is not maintainable and the said H.A. Rawal is not entitled to any relief and the reference is fit to be rejected. The Bank has denied paras of the statement of claim and has also denied that he (H.A. Rawal) was recruited a peon in the Gymkhana branch of Bank.

5. The Bank (1st Party) adduced documentary evidence by producing its documents at Ext. 10 and market Exts. 13 to 75. Whereas the claimant H.A. Rawal produced two documents as per list Ext. 5 (1) statement showing details of working in Gymkhana branch (mark-1) and copy of representation dated 28-08-1992 (mark-2) and only mark-2 was taken in Ext. As 76 without prejudice on noting down endorsement by lawyer of the 1st Party. The document mark-1 was self-made statement of H.A. Rawal so was not taken in documentary evidence. The claimant H.A. Rawal deposed in oral evidence and was cross examined by Bank's lawyer at Ext. 77. The Bank's witness Natwarlal deposed oral evidence at Ext. 79 and was cross examined by the claimant's lawyer.

6. In view of pleading and rival contention of the parties the following issues are taken up for determination:

#### ISSUES

- (i) Whether the reference is maintainable?

- (ii) Has the claimant H.A. Rawal valid cause of action?
- (iii) Has the claimant (H.A. Rawal) works for 240 days as casual worker in the Gymkhana branch of Bank in calendar year preceding his alleged termination *w.e.f.* 26-08-1992?
- (iv) Is the relationship of master and servant exist between Bank (1st party) and the claimant (2nd party)?
- (v) Whether claimant (H.A. Rawal) is entitled to any relief in this case?
- (vi) What orders are to be passed?

### FINDINGS

**7. ISSUE No (iii) and (iv):** The claimant H.A. Rawal in his oral evidence (Ext. 77) during cross examination has admitted that recruitment order or any appointment letter was not given to him by the Bank. He also admits that he is not aware about any juniors or recruitment of new face. He also admitted that he was putting bills for the work done by him in the Bank (1st party) the Bank used to pay him on vouchers. He admitted the vouchers Ext. 13 to 75. On perusal of voucher it is evident that four vouchers Ext. 13 to 16 are for the year 1989, 21 vouchers are for the year 1990 (*vide* Ex. 17 to 36), 27 vouchers Ext. 37 to 63 are for the year 1991 and 12 vouchers Ext. 64 to 75 are for the year 1992 up to 21.07.1992. The claimant has not challenged that any other vouchers have been withheld by the 1st party (Bank). From perusal of voucher, it is obvious that vouchers for any calendar year do not show that the claimant as daily worker completed 240 days of work. So is the picture for the calendar year preceding alleged termination that from August 91 to August 92, the claimant was paid through vouchers for his casual work of water tank cleaning as and when required by Bank and on submitting bills by the claimant H.A. Rawal. He never completed 240 days of work as casual worker. The self-made statement of works by the claimant H.A. Rawal (mark-1) has got no evidentiary value since this statement of works has not been admitted by the 1st party Bank. This does not also contained the seal and signature of any Bank's officer of Gymkhana branch. This unauthenticated statement is well discarded by the documentary evidence of 1st party Bank Ext. 13 to 75. In such view of the matter such evidence of H.A. Rawal at Ext. 77 is meaningless that the 1st party used to mark his attendance on the other hand the documentary evidence Ext. 13 to 75 coupled with evidence of Bank witness (Ext. 79) the claimant worker H.A. Rawal was engaged for cleaning water tank and for filling water as and when required and it is not true the claimant Rawal has put in more than 240 days of works with the 1st party Bank by doing continuous work on daily basis and that the concerned worker claimant Hasmukh was not employed as a peon.

8. The 1st party Bank has relied upon case law of (1) *Magarson Vs. State of U.P. & others-2002 III CLR 470-Allahabad High court.* (2) *State of UP & another Vs. Ram Krishna and another-1999 LAB, I.C. 3555 S.C.* and (3) *Secretary, State of Karnataka & others Vs. Umadevi and others SCP (3) 9103-9105 2005* to support that when the workman was never appointed on regular vacancy and was terminated by oral order, he has no right to claim continuance and that the claimant as daily worker cannot claim for appointment on regular basis through back door entry.

9. On the other hand, the case law cited on behalf of the 2nd party (H.A. Rawal) (1) *Ram Krishan Gurjar Vs. State of Rajasthan 2006 LAB I.C.56* (2) *T.A. Benny Vs. Rajasthan Co-Operative Dairy Federation Ltd. 1991 460 11 C Raj* are not applicable to support the claimant's case.

10. From consideration of the evidences discussed above and also in view of the case laws relied upon by the 1st party Bank I find that the claimant H.A. Rawal has also failed to prove the violation of the provision of section 25(G), 25(H) of the I.D. Act, 1947 since he is not aware about any Juniors of fresh recruitment ignoring him. Similarly the claimant has also failed to prove that the 1st party Bank has violated the provision of section 25 F of the ID. Act. More so the provision of section 25 (N) is not attracted in the instant case. The 2nd party claimant Shri H.A. Rawal has failed to prove that he completed 240 days of works in the Gymkhana Branch of bank at Rajkot preceding his alleged oral termination *w.e.f.* 26.8.1992. The claimants has also failed to prove relationship of master and servant between bank and him because he was submitting bills for work done and was paid by bank through vouchers (Ext. 13 to 75) So, Issue No. (iii) and (iv) are decided against the 2nd party.

**11. ISSUE No. (v) :** In view of findings in the foregoing while deciding issued No. (iii) & (iv), I further find and hold that the 2nd party (Claimant H.A. Rawal) is not entitled to any relief if in this case.

**12. ISSUE NO. (i), (ii) and (vi):** This reference is devoid of any merit and is not maintainable and the 2nd party has no valid cause of action to raise industrial dispute.

This reference is dismissed on contest by the 1st party. However, no order as to cost.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 3 दिसम्बर, 2013

**का०आ० 2680.—**औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण, अहमदाबाद के पंचाट (संदर्भ संख्या 83/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/12/2013 को प्राप्त हुआ था।

[सं एल-12012/259/97-आई आर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 3rd December, 2013

**S.O. 2680.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 83/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 03/12/2013.

[No. L-12012/259/97-IR (B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### PRESENT:

Binay Kumar Sinha, Presiding Officer,  
CGIT-cum-Labour Court,

Ahmedabad, Dated 15th October, 2013

**Reference: (C.G.I.T.A.) No. 83 of 2004**

**Reference: (I.T.C.) 38 of 1998 (Old)**

The Manager, State Bank of India,  
Astodia Road Branch, Astodia,  
Ahmedabad-380001

...First Party

And Their Workman

Shri Habibkhan Sandalkhan Pathan  
House No. 682/6, Ghadeyali Manzil,  
Behind Mirzapur Police Chouki,  
Mirzapur, Ahmedabad-380001

...Second Party

For the First Party: Mrs. Meenaben Shah,  
Advocate

For the Second Party: Shri Arish L. Saiyad, Advocate

#### AWARD

The Central Government/Ministry of Labour *vide* order No. L-12012/259/97-IR(B-I) dated 05.06.1998 under cause (d) sub-section (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947, referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad under terms of reference in the Schedule:—

#### SCHEDULE

"Whether the action of the management of State Bank of India, Astodia Road Branch, Ahmedabad is justified in terminating the services of Shri Habibkhan

Sandalkhan Pathan *vide* order dated 22.04.1995? If not, what relief the workman concerned is entitled to?"

2. The case of the workman(2nd party) as per statement of claim (Ext.4) is that he joined in the service of the 1st party as peon since 1982 and was performing duty from 11.00 a.m. to 5.00 p.m. and was getting Rs. 600 per month salary and benefits of other allowance. He was doing duty honestly and diligently and his service record was blotless. The officer of Bank, Astodia branch were taking from him overtime works without paying overtime allowance and when he was demanding, O.T. he was being threatened to be implicated in false misconduct cases and by holding enquiry he would be punished. The Bank officers were taking personal works from him applying force and threats and they also got several papers in his hand writing and signatures and also got obtained from him several vouchers and printed form filled and also obtained his signatures of several plain papers and the officer committed cheating and fraud against him. The officers also hatched up conspiracy for victimising him and issued show cause to him and also issued false chargesheet to him and against the principle of natural Justice departmental enquiry was conducted against him and on false assurance also got his acceptance letter to the chargesheet obtained which is in typed English language and got his signature in Gujarati language obtained on acceptance letter and false enquiry report was submitted. He was suspended illegally and subsequently on basis of false enquiry report, he was terminated from the services on 22.04.1995. He was not given opportunity to defend in departmental enquiry and all unfair labour practice was adopted by the 1st Party. His termination order is got up under conspiracy against him by the management of the 1st Party and so his termination from service is illegal and unjustified and has caused his economic death. On these scores, prayer is to set aside his termination order dated 22.04.1995 and to reinstate him with back wages and consequential benefits and continuity in service and also to grant any other relief to which he is found entitled.

3. As against this, the contention of the Bank (1st Party) as per written statement (Ext. 7) is that the contents of statement of claim are not true and are denied, and the reference is not maintainable and deserves to be rejected. The case of the 1st Party is that Shri Habibkhan was working as messenger at Astodia Road Branch of S.B.I. He had made unsuccessful attempt to defraud the Bank by fraudulently altering current. Account credit voucher of M/s. Capital Consultancy on 30.06.1994 with a view to crediting the amount to his own account. He confessed in writing to his having made an attempt to defraud the Bank. Such action of Habibkhan is a case of gross misconduct under para 521(4) (j) of the Shastri Award read with para 18.20 of the Desai Award and the modification agreed upon

in the 4th bipartite settlement between State Bank of India and all India SBI staff Federation which are applicable to award employees. Para 521(4)(j) of the Shastri Award reads as follows:

"Doing any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss."

Against the workman Habibkhan an internal investigation was carried out for attempted fraud and a *prima facie* case was found and chargesheet dated 06.10.1994 was served on him and a domestic enquiry was conducted and the workman admitted the chargesheet, then second show cause notice was given and thereafter the D.A. (Disciplinary Authority) imposed punishment of discharge from the services *vide* order dated 22.04.1995. The delinquent workman preferred appeal before appellate authority and the appeal was also rejected considering his submission. The enquiry was conducted in a free and fair manner and principles of natural Justice was observed. It has been denied that the Bank was taking overtime work from him rather from him no other works apart from mesengerial duty was taken during office hours. No personal works from him was taken by the Bank's officers. The 1st party has denied the allegation at Para 1 to 7 of the S/c. Alternative plea has also been taken that if the Tribunal during course of hearing comes to the conclusion that the inquiry conducted by the Bank was not in accordance with laid down principles of natural Justice and the enquiry vitiates then the 1st party Bank be given opportunities to conduct fresh enquiry before this Tribunal to justify its action taken against the delinquent workman for the misconduct under the chargesheet. On these scores prayer is that the 2nd party workman is not entitled to any relief and the reference is fit to be dismissed.

4. It may not be out of place to mention that during hearing of this case the 2nd Party admitted legality of departmental inquiry and passed pursis before this Tribunal to that extent. The workman (2nd party) in his affidavit (Ext. 16) stated that in his presence domestic enquiry was held against him against the chargesheet issued on him and he has nothing to say as to legality and validity of domestic inquiry but punishment of discharge from the service is too harsh and so he is challenging the order of punishment and that he remained unemployed after dismissal. Then *vide* Ext. 34, the 2nd Party submit closing pursis. In such view of the matter the 1st Party (Bank) has passed a pursis (Ext. 35) that the workman has not challenged legality of

departmental inquiry conducted against him nor the workman have led any oral evidence on that point. So, the 1st party Bank does not desire to lead oral evidence on point of legality of inquiry and may be treated as closed.

5. In view of the rival contention of the parties the following issues are taken up for consideration and adjudication in this case:

#### ISSUES

- (i) Is the reference maintainable?
- (ii) Has the delinquent workman Shri H.S. Pathan valid cause of action?
- (iii) Whether the punishment imposed by the Disciplinary Authority of the 1st party against the delinquent is shockingly disproportionate to the gravity of misconduct under the chargesheet?
- (iv) Whether the 2nd Party (delinquent workman) is entitled to any relief?

#### FINDINGS

6. **Issue No. iii :—** I have gone through the documents of enquiry file produced by the 1st party under list Ext. 8. Those have been marked Ext. 18 to 33. Ext. 18 is copy of letter of the delinquent H.S. Pathan to A.G.M. of the Bank. Ext. 19 is suspension order dated 04.07.1994 of the workman. Ext. 20 is copy of chargesheet dated 06.10.1994 issued on the workman. Ext. 21 is copy of letter addressed to the workman dated 08.11.1994. Ext. 22 is copy of written explanation given by the workman to the chargesheet admitting his mistake and seeking apology. Ext. 23 is copy of enquiry proceedings. Ext. 24 is copy of attested instrument (Cash Vouchers) dated 27.06.1994 of the amount of Rs. 1,52,557.50 for credit of the funds to the accounts of M/s Capital Consultancy upon which the workman is alleged to have tempered and attempted to have credit that amount in his account running in the branch of Bank. Ext. 25 is copy of letter from presenting officer to the inquiry officer to the effect that he (P.O.) was present at the time of inquiry held at conference hall Z.O. The charge sheeted employee also was present and he (C.S.) has confessed and accepted the charges levelled against him and therefore he (P.O.) does not have to present anything. Ext. 26 is copy of 2nd show cause notice dated 25.03.1995 issued to the delinquent workman by the Disciplinary Authority. Ext. 27 is copy of reply to 2nd show cause notice by the delinquent workman to the Disciplinary Authority dated 18.04.1995 containing signatures of the delinquent workman Habibkhan, his defence representative Shri A.H. Rawal and the Disciplinary Authority (AGM. II). The delinquent and his D.R. during hearing submitted to the D.A. that



delinquent was passing through extreme financial hardship and his action of having altered the credit voucher at Astodia Road Branch had occurred at the time when he was not in proper frame of mind and was going through on the family front. Ext. 29 is copy of written acceptance of charge by the delinquent workman Habibkhan dated 10.04.1995 appolising for the misconduct to the G.M. State Bank of India, Astodia Road Branch. Ext. 30 is the copy of punishment order dated 22.04.1995 as to discharge from the Bank's service forthwith. Ext. 31 is copy of the Appeal dated 18.05.1995 to the Deputy General Manager (Appellate Authority) S.B.I., Ahmedabad, Zonal Office. Ext. 32 is copy of the application given by the delinquent workman to Chief Deputy General Manager dated 07.06.1995 upon this there is noting of D.G.M. and Appellate Authority regarding oral submission of Shri Habibkhan Pathan that he appeared on 07.06.1995 at 2.40 p.m. and submitted that his mother was suffering from cancer and his father was suffering from paralysis. His brother had expired. He was therefore under economic crisis. He lost his mental balance and credited the voucher in his favour. Looking to his large family, he should be given lighter punishment. Ext. 33 is copy of order dated 08.06.1995 passed by the Appellate Authority rejecting the mercy appeal of the delinquent workman Habibkhan Pathan.

7. Shri Arish A. Saiyad, Learned Advocate for the 2nd party argued that the delinquent Habibkhan Pathan had admitted his misconduct in his acceptance letter *vide* Ext. 18 and again the delinquent accepted his misconduct in reply to 2nd show cause notice (Ext. 26) *vide* Ext. 27 seeking apology. It has been further argued that the past record of Habibkhan Pathan was clean and blotless and he was performing his duty of messenger delinquently and honestly but due to disturb state of mind due to death of elder brother and parents suffering from cancer and paralysis and he having extreme financial crisis attempted to alter the account number and payees name in the case/ credit voucher in his favour is a current account credit voucher of a customer on 30.06.1994 but it was detected on the same day and the delinquent could not have been able to credit the amount in his current account for wrongful gain and thus the S.B.I branch, Astodia road had not suffered and monetary loss which can be said to be actually an act prejudicial to the interest of the Bank, or such gross negligence or negligence to cause Bank in serious loss. Summing up his argument Shri Saiyad submitted that the punishment of discharge forthwith *vide* Ext. 30 of the 2nd party is disproportionate to the gravity of misconduct and so the Tribunal can exercise the power u/s A of the I.D. Act, 1947 in altering/modifying the punishment so imposed to be in lighter punishment so that the 2nd party may not face

economic death of him as well as of his family members. In support of arguments on behalf of the 2nd Party five case laws have been relied upon: (1.) Roop Singh Negi Vs. Punjab National Bank and other 2009 (120) FLR 610 S.C. In this given case law appellant peon was dismissed from service for misconduct relating to stealing draft book, fraud/ embezzlement. He was discharged in criminal case for same allegation and the inference drawn in disciplinary enquiry by the enquiry officer by relying upon the confession made by the appellant there was no reason as to why the order of discharge passed by the criminal court on basis of self-same evidence should not have been taken into consideration. (2.) Natverbhai S. Makwana Vs. Union Bank of India (1984 GLH 791). In departmental Enquiry admission of guilt should not be regarded as sufficient proof of misconduct rather proof of faults constituting misconduct is necessary (3) Jashir Singh Vs. Punjab and Sind Bank and others [2007 (112)] FLR 911 S.C. In this given case law the appellant peon was dismissed from service allegation was he had forged signature of a depositor and had fraudulently withdraw Rs. 25,000 Criminal case and departmental proceeding both were initiated against him by the Bank. He (peon) was acquitted in criminal case charge proved in departmental proceeding. Bank also filed suit for recovery of the said amount in the civil court from the peon which was dismissed and the Judgment became final. On that facts it was held by the Hon'ble Apex Court that appellant was treated very unfairly and unreasonably and so impugned order of dismissal was set-aside and the appellant peon was ordered to be reinstated. (4.) T.K. Rabari Vs. Guj Sheep & wool Development Corp. Ltd. [2003(1) GLH 75]. The facts of the case law is based on removal from service on the ground of unauthorised absenteeism from the service. This case law does not appear to be a befitting case law in the instant case. (5.) Mavji C. Lakum Vs. Central Bank of India [2008 (199) LFR 96 S.C.] is on the point of invoking jurisdiction by the Labour Court/Tribunal u/s 11A of the I.D. Act for exercising discretion.

8. On the other hand, Ms. Meenaben Shah, Learned Advocate for the 1st party argued in support of punishment of discharge imposed on the 2nd party Habibkhan Pathan pointing towards his misdeed that being a peon/messenger, he attempted to defraud the Bank by alteration of his name with current A/c number in the current payment vouchers of the customer of the Bank and that the 2nd Party did not examine any witness in defence rather admitted his misdeed/ misbehaviour thrice before the management of Bank. In support of her such arguments Ms. Meenaben Shah, Advocate has relied upon seven case laws (1) Akhilesh Kumar Sindhu Vs. State Bank of Jharkhand and others (2008 (116) FLR 404 S.C. wherein it has been held that if the

charges leveled against the petitioner are proved, serious in nature superior court not to interfere with the quantum of punishment ordinarily. (2) Uttarpradesh State Road Transport Corporation Vs. Vindokumar (2008 SCC (L&S) - 1 where in dealing with section 11-A of the I.D. Act, 1947 their Lordship have held that when the workman concerned has not challenged the legality and fairness of departmental inquiry but challenged only conclusion of inquiry officer and quantum of punishment inflicted by the management, the labour Court could not proved. (3) Case of Pravin Bhatia and Union of Indian & others (2003) (121) FLR 391 under which the Hon'ble court has discussed the power of the Labour Court/Tribunal to interference in the quantum of punishment when relevant factors are not considered by the management. (4) The case of P.K. Thankachand & Thalanadu services Co-operative Bank & another [1994 (1) LLN - 411, Kerala High Court] where in their Lordship held that the employees when admitted misconduct on his part before the enquiry proceeding; enquiry officer is not bound to record the evidence to the charges and he can made report merely on the basis of admission. (5) The Case of Dilip Sagar Vs. Deputy General Manager, Syndicate Bank association and another (2005 LLR 218 Gujarat High Court) it was held that bank being a financial institution cannot afford to continue the dishonest employee; his dismissal from services after affording reasonable opportunity of hearing, no interference required in quantum of punishment. (6) The case of Damoh Panna, Sugar Rural Regional Bank, and others and Munnalal Jain [2005 (1) LLN 662 SC] the Bank employee cannot act beyond once authority it is breach discipline of and it is misconduct. (7) The case of Delhi transport Corporation Vs. Jayprakash (2012) Vol-III CLR-331 Delhi High Court) once misconduct was proved to have being committed by workman it was not within the power of Labour Court to hold that no punishment deserved to be given to delinquent workman and that the Tribunal or Labour Court cannot exercise its discretion u/s 11-A of I.D. Act.

9. After careful consideration of the material on the record and the arguments advanced by both sides supported with the case laws as discussed above, I am of the considered view that though the delinquent workman Habibkhan Pathan has admitted his misdeed/misconduct of attempting to hold the voucher payment in the current account of the customer by replacing name and current account but the concern workman could not succeed in getting amount transferred in his account on the same date 30.06.1994. So virtually the bank has not been put to financial loss and the concern customer has no in grievances with the concern bank that his case voucher of Rs. 152557.50/- was not credited to its account of M/s. Capital Consultancy.

More so, no complaint or even written grievance of the M/s. Capital Consultancy was made to the Astodia Road Branch of SBI. So, this cannot be taken to wrongful gain to delinquent actually that the concern workman Habibkhan, working as peon/messenger had done such act which has caused serious prejudice to the interest of the bank or it was the case of gross negligence. Rather the case of the workman was attempted effort by altering in his name so it was negligence and misconduct on part of workman but cannot be said to be the gross negligence on his part. The bank was not put in financial loss due to such negligence on part of the 2nd party workman. The materials on the record through three stage written admission of the 2nd party reveals that he was in disturbed stage of mind on 30.06.1994 due to death of his elder brother and mother suffering from cancer and father suffering from paralysis and he was in financial crisis and that situation had tempted him to alter the account payees name in the cash voucher in his favour in the current account of bank's customer M/s. Capital Consultancy. This situation had been written by the concern workman in the preliminary enquiry and before the enquiry officer on explaining to charge Ext. 20 and also in reply to the 2nd show cause notice Ext. 27 attached with written admission Ext. 29 before the disciplinary Authority and also before the Appellate Authority vide Ext. 18, 29 and 32. So, the misconduct in the chargesheet was not serious which have attracted for inflicting punishment of discharge forthwith from the service of the bank. Neither disciplinary authority in its order dated 22.04.1995 (Ext. 30) nor the Appellate Authority in its order dated 08.06.1995 (Ext. 33) had taken into consideration the materials on the record in right perspective in the written admission of the misconduct of the workman regarding the extenuating circumstances. More so in written admission of the workman H.S. Pathan dated 07.06.1995 Ext. 32 there is also endorsement/noting of Depute General Manager and Appellate Authority dated 07.06.1995 regarding the reason of such misconduct by the workman H.S. Pathan but it was not taken in the consideration at all and the Appellate Authority simply ditto the punishment of discharge imposed by the Disciplinary Authority vide Ext. 30. I am of the considered view that this is not case of such gross negligence for imposing punishment of dismissal/discharge since it was an attempted alternation of credit voucher of customer by the 2nd party workman. So awarding of other major punishment like stoppage of increment have to be considered by the Disciplinary Authority of the management of the bank rather to discharge from the service of Bank forthwith. The punishment so imposed upon the 2nd party workman very much shocks judicial conscience of this Tribunal that punishment awarded is certainly disproportionate to the

gravity of the misconduct under the charge sheet. In such view of the matter, the case law relied upon on behalf of the 2nd party are applicable in the instant case. The case laws (1) 2009 (120) FLR 610 SC, (2) 1984 GLH 791 (3) 2007 (112) FLR 916 SC and (4) 2008 191 FLR 91 SC (Supra) are applicable in the instant case. So this Tribunal by invoking the power u/s 11A of the I.D. Act, 1947, find it a fit case in exercising discretion in modifying the punishment imposed by the disciplinary authority of the bank. This issue is accordingly decided against management of bank 1st Party)

**10. Issue No. I and II:** In view of the findings, given in the foregoing to Issue No. III, I further find and hold that the reference is maintainable and the delinquent workman Shri H.S. Pathan has valid cause of action.

**11. Issue No. IV:** Since the punishment of discharge from the service of the bank imposed on the delinquent workman in shockingly disproportionate to the gravity of misconduct of the delinquent so by exercising powers u/s 11(A) of the I.D. Act, 1947, this Tribunal has found reasonable ground to make interference in punishment order dated 22.04.2005. As such the order passed by the Disciplinary authority dated 22.04.1995 and confirm by appellate authority dated 08.06.1996 vide Ext. 30 and 33 are set-aside. The punishment is altered/modified by the punishment order of withholding of three increments with future effects of the delinquents workman and the 2nd party workman Shri H.S. Pathan is directed to be reinstated with continuity in service without any back wages.

This reference case is accordingly allowed in part No order as to any cost. The management of 1st party directed to implement the Award within one month of the receipt copy of the Award.

BINAY KUMAR SINHA, Presiding Officer  
नई दिल्ली, 3 दिसम्बर, 2013

**का०आ० 2681.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अहमदाबाद के पंचाट (संदर्भ संख्या 186/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.12.2013 को प्राप्त हुआ था।

[सं० एल-41012/44/98-आईआर (बी-1)]  
सुमति सकलानी, अनुभाग अधिकारी

New Delhi the 3rd December, 2013

**S.O. 2681.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 186/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial

dispute between the management of Western Railway, and their workmen, received by the Central Government on 03.12.2013.

[No. L-41012/44/98-IR(B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### PRESENT:

Binay Kumar Sinha, Presiding Officer  
CGIT-cum-Labour Court,  
Ahmedabad

Dated 5th September, 2013

**Reference: (CGITA) No. 186 of 2004**

**Reference (I.T.C.) No. 95 1999 (old)**

The Divisional Railway Manager,  
Western Railway, Bhavnagar Division,  
Bhavnagar, Gujarat

and

Their Workman  
Shri Premji Bhyamji  
Through Paschim Railway Karmachari Parishad  
(P.R.K.P.) E-209, Sarottam Nagar,  
Behind New Railway Colony,  
Sabarmati, Ahmedabad

For the 1st Party: Shri H.B. Shah, Advocate

For the 2nd Party: Shri R.S. Sisodia, General  
Secretary, P.R.K.P.

#### AWARD

The Central Government/Ministry of Labour by its order No. L-41812/44/98/IR(B-1), New Delhi dated 17.03.1999 under Cl. (d) of sub-section (1) and sub-section 2(A) of section 10 of the I.D. Act, 1947, referred the dispute for adjudication to Industrial Tribunal, Ahmedabad (Gujarat) under the terms of reference as per schedule:

#### SCHEDULE

"Whether the demand of Paschim Railway Karmachari Parishad for the Re-engagement of Shri Premaji Shyamji ex. casual substitute along with other casual substitute Shri Rahim Noorabhai and Shri Kalu Ali is legal and justified? If yes then, to what relief the concerned workman is entitled to and from what date."

2. The case of the Union (P.R.K.P) as per statement of claim (Ext. 6) is that Premaji Shyamji was serving as

substitute Railway employee under Fitter in charge, Botad, a Railway Establishment of Western Railway, Bhavnagar Division under D.R.M., Bhavnagar Para, since 1981. As per Railway Board order a register is to be maintained for casual labour so that as and when vacancy arises permanent posting can be made. A list of casual worker was prepared after taking their interview on 22.04.1981. The name of Premaji was at serial No. 15 in the list who was engaged on 09.06.1980. In that list the names of Rahim M. and Kalu Ali were at Sl. No. 16 and 17, Premaji Shyamji was making contact with supervisor for permanent post but no reply given. In the month of September, 1995 he came to know that Rahim M. and Kalu Ali were posted as permanent Railway employee even though his (Premaji) name was above in the list. Then Premaji gave several applications to Railway Administration and other concern authority for not giving him employment but no proper reply was given. Then dispute was raised before conciliation officer and conciliation failed and then matter referred for adjudication. The demand is made that as per Railway Rules and regulation that senior person in the list should be given priority for permanent job where as in the case two Juniors Rahim M. and Kalu Ali were given permanent job and discarding Premaji indiscriminately. On these scores relief has been sought for by the Union P.R.K.P. that Premaji Shyamji be given permanent post from the date his Junior Rahim and Kalu were given permanent post and Premaji be paid regular salary from that date with arrears of payment and all other consequential benefits with interest and cost and also for any other relief to which Premaji Shyamji is found entitled.

3. The stands as taken by the first party as per written statement (Ext. 12) are that the dispute referred for adjudication is not maintainable. Status of the concerned worker Premaji Shyamji at the relevant time was that he worked as casual labour and right to claim permanent post to casual labour arises only on the basis of inclusion of name in live register prepared as per the directive of Hon'ble Supreme Court. But the name of Premaji Shyamji is not in the live register. For inclusion of the name the 2nd party workman and other casual Labourers approached before CAT, Ahmedabad bench and also before Hon'ble Gujarat High Court but the application were rejected. The 1st party have denied averment of para 1,2,3,4,5,6,7,8,9, 10 of the statement of claim but admitted to para 9 of S/c. It is further case of the 1st party that workman Premji and other 5 workman filed O.A. No. 127/90 before CAT Ahmedabad bench regarding no inclusion of their names in the Supplementary live register of ex. Casual labourer and it was directed by Hon'ble CAT by oral order that the 2nd party (Premji) and other applicants to submit the performa

as per circular dated 03.01.1994 to be submitted within 40 days to the welfare Inspector, Bhavnagar and on the receipt of the application as per perform the Rly dept. shall scrutinize the claim and to take decision to include or non-include the names in supplementary live register. But the 2nd party could not submit the application within time granted and by filing M.A. No. 355/95 before CAT, Ahmedabad sought extension of time and by order dated 21.06.1995 time was extended to submit application for inclusion of their names in supplementary live register and after verifying the records, the competent authority took the decision and it was communicated to the 2nd party workman Premaji Shyamji. As against this contempt petition No. 45/96 in O.A. No. 127/90 was filed by Premji and it was requested to submit documentary evidence if he has worked more than 14 days before 14.07.1981 under FIC, Botad and the said contempt petition No. 45/96 was decided accordingly. Premaji Shyamji submitted that he had worked under FIC, Botad from 09.06.1980 to 08.07.1980 as cooli. But on verification by the 1st party (W. Railway) the records and register maintained by unit FIC, Botad but it was found that he (Premji) has not worked for the period as claimed by him and so reply was given to Premji that his name is not to be considered for inclusion in the supplementary live register. Further case is that the workman Premji had not complied with the circular issued by the western Railway for inclusion of names in live register and the workman has made submission after 19 year and so he dispute raised is not maintainable for delay, laches. The claim of the 2nd party Premji for permanent post arises only in case of the name included in live register. On these grounds it has been submitted that the 2nd party workman is not entitled to reliefs as prayed and the reference is fit to be rejected.

4. In view of the pleadings and rival contention of the parties the following points are to be decided:—

#### POINTS

- (i) Whether the reference is maintainable?
- (ii) Whether the Union (P.R.K.P., Ahmedabad) has valid cause of action to raise dispute for the concern workman Shri Premaji Shyamji
- (iii) Whether the demand of P.R.K.P for the re-engagement of Shri Premji Shyamji ex-casual substitute from the date 04.09.1995 from which date Shri Rahim Noorbhai and Shri Kalu Ali were re engaged as substitute gangman in the scale Rs. 775-1025 (RP) is legal and justified?
- (iv) Whether the union P.R.K.P is entitled for the relief for concerned workman Premji Shyamji as demanded?



## FINDINGS

**5. POINTS NO. iii and iv:—**The 2nd party (P.R.K.P.) submitted three documents as per list at Ext 13- (1) zerox copy of statement of inter viewed employees by FIC, Botad on 22.04.1971 in which name of concern workman Premji Shyamjee in list is at 15, whereas names of reengaged ex casual worker Rahim Noor Mohamed and Kallu Ali are at Sl. No. 16 & 17 respectively. The date of initial engagement of Premji Shyamjee as well as of Rahim Noor Mohamed and Kalu Ali are identical 09.06.1980. The date of birth of Premji is 05.12.1958 qualification middle pass. The date of birth of Rahim and Kalu are 12.05.1959 and 27.09.1961 respectively and both also middle pass. The period of work of premjee is credited to 30 days whereas period of work of Rahim and Kalu are only credited to 21 days and 19 days. There is no any remarks regarding Premjee that he is under age or over age as in the case of some others mentioned in remarks column against list A and B. Ext. 13/2 and 13/3 are two appointment letters to Shri Kalu Ali and Rahim Noor Mohamed issued by D.R.M.'s office Bhavnagar para dated 04.09.1995 as to their reengagement from supplementary live Register as substitute gangman scale 775-1025 (R.P.). The 2nd party Union (P.R.K.P) further submitted three documents as per list at Ext. 16 Ext. 16/1 is zerox copy of record of service as casual labour of Shri Premji Shyamji (5 pages) that go to show that he worked as casual labour/ substitute from 09.06.1980 to 08.07.1980 at FIC, Botad, date of birth 05.12.1958 standard VIIth pass age 22 years and nature of work. Engaged as substitute khalasi and worked as box boy. Ext 16/2 is zerox copy of certificate issued by FIC Botad. Ext 16/3 is zerox copy of order passed in O.A. No. 127/90 dated 15.03.1995 disposed of with direction to respondent (Western Railway) to scrutinise the claims of applicant and to take decision as to inclusion or non-inclusion of name in the supplementary live register. There is also D.R.M.'s office bhavnagar para W. Rly letter dated 19.12.1995 addressed to the concern workman Premji Shyamjee regarding non-inclusion of name in the supplementary live register as he worked less than 14 days which is with reference to order dated 15.03.1995 in OA No. 447/90. It has been informed by the 1st party (W.R, D.R.M.'s office Bhavnagar para) that as per our record your name is not available in the unit register of FIC Botad where you claimed to have worked and that only names of those persons were included in the task force and worked for more than 14 days before 1981. But the document at Ext. 13/1 and 16/1 and 16/2 sufficiently go to prove that the concern workman Premaji Shyamji had worked for 30 days at FIC Botad and his initial appointment was on 09.06.1980 and worked as substitute up to 08.07.1984. That means much before the cut off period of 1981, he (Premji Shyamji) had completed more than 14 days of work for inclusion of his name in supplementary live register. Further for substantiating the claim of concern workman Premji Shyamji

the Union of PRRKP as per Ext. 17 and 19 and 21 demanded production of three documents by the 1st party (1) Copy of muster role of FIC Botad for the period of 09.06.1980 to 08.07.1980 (2) Copy of medical certificate issued to Premji Shyamji by CMS, Bhavnagar certificate no. 87873 on 01.12.1981 and (3) Screening held on 22.06.1992 to 25.06.1992. There by a pursis Ext. 26 the 2nd party demanded production of 3rd document-copy of screening held on 22.06.1992 to 25.06.1992 since 1st party produced only two documents out of three, again by a pursis Ext. 27 demanded production of 3rd document copy of screening held from 22.06.1992 to 25.06.1992.

6. The concern workman Premji Shyamji deposed in oral evidence vide Ext. 28 and stated that Rahim and Kalu were also engaged with him who were Junior to him serial No then Rly dept. removed them with others with assurance to call when there will be requirement. He deposed that railway administration got his medical test done. Kalu and Raheem Junior to him were appointed on 04.09.1995 but he was not taken. Then he made representation on which Rly administration replied that you have worked for less than 14 days where as he had worked for 30 days vide para 5 he deposed that he is unemployed for the last 5 years vide para 8 of cross he deposed that Rly administration had no demanded paper prior to date 14.07.1981 in support of him claim. He stated as suggestion of 1st party's lawyer that you did not raise dispute for 14 years to which he replied it is not true. Thus nothing could have been gained to discredit testimony of the concern workmen Premji Shyamji.

7. The 1st party through a list Ext. 29 submitted 6 documents. 29/1 is copy of order of Hon'ble CAT in OA 127/90. 29/2 is copy of order in C.A. 89/95 in OA 127/90 dated 13.03.1996. 29/3 is copy of order of CAT in C.A. 45/95 in O.A. 127/90. Ext. 29/4 is copy of railway letter to concern workman Premji Shyamji dated 19.12.1995. The copy of which also filed by union vide list Ext. 16. Ext. M29/5 is letter dated 05.08.1997 to Divisional Secretary W.R.E.U BVP. On the subject of non-inclusion of name in supplementary live register of ex casual labour/substitutes with reference to Hon'ble CAT directive n C.A. No. 45/96 in O.A. 127/90. From this letter of Rly administration, it is obvious that the case of the concern workman Premji Shyamji was not considered carefully where as he had completed 30 days of work 09.06.1980 to 08.07.1980 at CIF Boted as per Ext. 16/1 and 16/2.

8. The 1st party (W.Rly) also examined a witness Sunil Puradar, Asst. Divi personal Officer D.R.M. Office Bhavnagar W. Railway vide Ext. 31. During cross by shri R.S. Sisodia president P.R.K.P. he stated vide para 25 that Premjee Shyamjee was engage as casual labour in open line on 09.06.1980 and it is also true that he worked up to 08.07.1980 and thereafter he was disengaged. He admitted on showing Ext. 13/1 list that a Sl. No. 15 there is name of

Premaji Shyamji and at Sl. No. 16 and 17 there are names of Rahim Noor and Kalu and at Ext. 17 there is name of Bhupat Kanji. The management witness also admitted with list Ext. 15 there is service card of Premaji Shyamji as extra labour. He admitted that in the list Ext. 13 there are appointed letter of Kalu and Rahim Noor dated 04.09.1995. This witness also admitted that at Sl.No. 68 and 69 there are names of Kalu and Rahim Noor respectively at Ext. 33/3 in this supplementary live register. At Sl. No. 70 there is name of Bhupat Kanji. Also admitting that in the muster roll Ext. 33/7 there is name of Premajee Shymji in attendance. As per Ext. 33/8 on 01.12.1981 medical fitness test was held of Premaji Shyamji and that in Ext 33/9 name of Premaji is at Sl. No. 50 showing work for 28 days. Ext. 33/9 is copy of casual labour of Engg Dept. attended or RIC, Boted dated 27.03.1992 vide para 27 the management witness further admitted that Annexure A is only list of casual labour engaged in project. The name of Kalu Ali, Rahim Noor and Premaji Shyamjee are casual labour of open line and that scheme of Annexure A is not enforceable on Kalu. Rahim Noor and Premajee Shyamji vide para 28 he conceded and admitted that till 31.03.1987 application have to be submitted only by project labours vide para 29 he admitted further it is true that Kalu Ali worked only for 19 days and Rahim Noormohamad for 21 days and Premaji Shyamji worked for 30 days and their names are at Annexure B (reference to Ext 13/1). On behalf of the 1st party list of casual labour on the basis of initial engagement has been submitted containing name of 369 persons. But there is no mention of name of Premaji Shyamji though he worked for 30 days and initial engagement on 09.06.1980. The management witness admitted that as per list all 369 casual labour have been appointed and that though there is no name mention of Kalu Ali in the list but he was also appointed as per second list which has not been produced by him. He also admitted that the person at Sl.No. 368 were initially engaged on 01.10.1981 and 29.06.1983 respectively. He admitted that Kalu Ali and Rahim Noor Mohamed were appointed on 04.09.1995 and they are working permanently. However, the management witness tried to escape from answering by saying he cannot say that the Railway administration deliberately did not issue appointment letter to Premaji Shyamji (volunteer) this is a matter of authority level he can't utter by going against Railway administration.

9. On consideration of the evidence and material discussed above I find that Premji Shyamni was deserving

to be appointed as that of Rahim Noor Mohamed and Kalu Ali on 04.09.1995 since all the three were initially engaged in open line at FIC Boted on 09.06.1980 and among them Premji Shyamji had worked for 30 days where as Rahim and Kalu had worked for only 21 and 19 days respectively. But inspsite of the directive of the Hon'ble CAT in O.A. 127/90 and C.A. No. 45/96 the case of Premaji Shyamji was not considered in right perspective by the Railway Administration of Bhavnagar D.R.M's office and against the record it was wrongly informed to the workmen that he has worked less than 14 days where as actually he had worked for 30 days and so there was all justification for inclusion of name of concern workman Premaji Shyamji in supplementary live register at serial above Rahim Noor Mohamed and Kalu Ali. The case laws cited by Shri H.B. Shah, Advocate for the 1st party 2010 1 SCC L&S 295, 2009 2 SCC 745, 2008 1 SCC(L&S) 743, 2009 2 SCC (L&S) 259, 2007 2 SCC (L&S) 258 and 2009 1 SCC (L&S) 358 are not applicable in the instant case to discredit the demand of Union for the genuine cause of the concern workman Premaji Shyamaji.

10. So the point No. iii and iv are answered accordingly that the demand of P.R.K.P. for the reengagement of Shri Premaji Shyamji ex casual labour/ substitute from date Shri Rahim Noormohamad and Shri Kalu Ali were reengaged as substitute gangman in the scale Rs. 775-1025 (R.P.) is legal and justified and that the Union (P.R.K.P.) is entitled for the relief for concerned workman Shri Premaji Shyamji as demanded.

11. **POINT NO. i and ii**— In view of findings to point No iii and iv in the foregoing, I further find and hold that the reference is not barred by delay and latches rather is maintainable and the Union (P.R.K.P.) having valid cause of action to raise dispute for the concern workman Premji Shyamji. So the reference is allowed on contest with cost of Rs. 5000/- to be paid to the concern workman Premaji Shyamji. The 1st party is directed to give permanent post to Premaji Shyamaji w.e.f. 04.09.1995 at par with his Junior Rahim Noor Mohamed and Kalu Ali by entering his name live register and to pay arrears to pay to Premaji Shyamaji from 04.09.1995 and on ward. Claim of interest on arrears of pay is disallowed to the 2nd party. The 1st party is directed to comply within two months of publication of this award.

This is my Award.

BINAY KUMAR SINHA, Presiding Officer